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NO-FLY ZONES: LAW, POLICY, AND THE 1994 BLACK HAWK FRATRICIDE

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NO-FLY ZONES: LAW, POLICY AND THE 1994 BLACK HAWK FRATRICIDE

ABSTRACT: This thesis examines the legal regime governing No-Fly Zone operations as a specialized type of Military Operation Other Than War (MOOTW) and the role of rules of engagement (ROE) in no-fly zones. This thesis asserts that fundamental principles of the law of armed conflict should apply by analogy to all MOOTW, to include no-fly zone operations. This thesis further applies specialized legal regimes from naval warfare law and aerial interception law for no-fly zone operations. Next, Operation PROVIDE COMFORT's Black Hawk fratricide presents an incident study for evaluation of operational ROE. A review of lessons learned from this incident demonstrates that status-based ROE are not always appropriate for no-fly zone operations. Finally, this thesis asserts that command authorities should limit implementation of status-based ROE to actual combat operations.

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"We're running up the valley. ... This smoke, right hand smoke is mine. Left hand smoke is [Lead]'s. ... There's one of them. Here's the second one. Nobody's there. No one could survive that."[1]

—"Tiger-2," USAF F-15, Northern Iraq, 14 April 1994

"I have modified the Rules of Engagement to reduce the likelihood of an inadvertent engagement of non-hostile helicopters while maintaining the necessary deterrent posture in the 'no-fly' zone."[2]

—GEN George A. Joulwan, 24 June 1994

I. Introduction

On 14 April 1994, US Air Force fighter pilots, patrolling Iraqi airspace under Operation PROVIDE COMFORT[3] rules of engagement, shot-down two US Army Black Hawk helicopters, tragically killing twenty-six people.[4] The pilots, part of a coalition no-fly zone

[1] Camera film audio from USAF F-15, call sign "Tiger-2", filmed on 14 Apr 94, (Copy in possession of author; *reprinted* at AFR 110-14 Accident Investigation Board Report, US Army UH-60 Black Hawk Helicopters 87-26000 and 88-26060, Vol. 4, Tab N-4 (27 May 1994)[hereinafter, Accident Investigation](This investigation took place prior to the U.C.M.J. Article 32 Investigation against seven USAF officers).

[2] GEN George A. Joulwan, Commander-in-Chief (hereinafter, CINC) US European Command (hereinafter, EUCOM), 24 Jun 94 Memorandum to Secretary of Defense, SUBJECT: *Endorsement of Report of Investigation into the Accidental Shoot-Down of two U.S. Army UH-60 Helicopters by two Operation Provide Comfort F-15 aircraft which occurred on 14 April 1994* (Copy in possession of author).

[3] Operation PROVIDE COMFORT (OPC) was the name of the northern Iraq no-fly zone operation imposed by combined forces after the Persian Gulf War. OPC is detailed *infra* at Part VI.

[4] John F. Harris and John Lancaster, *Officials Set Investigation Of Incident,* WASHINGTON POST, Apr. 15, 1994, at A-1 (In fact, the POST headline covered the Black Hawk fratricide: *U.S. Jets Over Iraq Mistakenly Down Two American Helicopters, Killing 26, Id.*).

operation, used deadly force to protect both the Kurdish population and humanitarian relief workers within the UN sanctioned security zone of northern Iraq.[5] At the time, status-based rules of engagement[6] controlled the pilots' use of force.

The Black Hawk fratricide immediately brought into question the nature of the military mission and the propriety of the mission's rules of engagement. Tactically, why did these jet-fighter pilots engage[7] and destroy unarmed helicopters? Militarily, why were the rules of engagement status-based instead of threat-based? Legally, did the fighters have the right to shoot under the law of armed conflict?[8] Politically, did it advance our national interests to

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[5] *See* UN Security Council Resolution 688, 30 I.L.M. 858 (1991) (adopted at the Security Council's 2982nd meeting, April 5, 1991, by a vote of 10 to 3 (Cuba, Yemen, Zimbabwe), with China and India abstaining)[hereinafter, Resolution 688]. The legal basis for the no-fly zone was humanitarian relief and safety of Kurdish populations in northern Iraq as called for in Resolution 688. Resolution 688 also barred all Iraqi military forces from a UN declared security zone in northern Iraq. For a geographic perspective, *see* Accident Investigation, *supra* note 1, at Executive Summary, Vol. 1, Atch. 1 (reproduced in this paper as Appendix 1, Maps of Operation PROVIDE COMFORT: the UN Security Zone and the Coalition No-Fly Zone).

[6] The actual rules of engagement are classified. For purposes of this paper, "status-based" rules of engagement exist when a competent superior commander declares an opposing force hostile. Under status-based rules, armed forces may use deadly force against any enemy force upon positive identification, in accordance with the specific operation's classified rules, of the military target as one from the command-declared hostile opposing force. *See infra* Part V(for distinction between rules of engagement types).

As a matter of style and for consistency, "rules of engagement" is spelled out at the first instance of the phrase's use in a sentence. Where appropriate, "rules" is used as a shorthand reference to the phrase "rules of engagement."

[7] Two definitions are relevant here: engage and engagement. Engage means "a fire control order used to direct or authorize units and/or weapon systems to fire on a designated target." THE JOINT CHIEFS OF STAFF, JOINT PUB 1-02: DEP'T OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 145 (J-7, Joint Staff eds., 1994)[hereinafter, DOD DICTIONARY].

[8] Also described by many scholars as the law of war (LOW) or as international humanitarian law (IHL). The law of armed conflict (LOAC) and LOW is used interchangeably by many instructors at the Army JAG School. This paper uses LOAC because it describes the law applicable in a combat situation, whether war is declared or not, as well as operations other than war where 'armed conflict' could occur, to include peace-keeping, peace-making and peace-enforcement operations as detailed in U.S. DEP'T OF ARMY, FIELD MANUAL 100-23, PEACE OPERATIONS (1994) [hereinafter, FM 100-23]. *See also* Major Dennis W. Shepherd, *A Bias-Free LOAC Approach Aimed at Instilling Battle Health in our Airmen*, 37 A.F.L. REV. 25, at note 2 (Major Shepherd presents a cogent explanation of his preference for the phrase LOAC and this author concurs).

have status-based rules of engagement? For that matter, what were our national interests in northern Iraq? How did the rules of engagement advance those interests? In sum, how did the no-fly zone's status-based rules of engagement meet political, military, and legal goals of our military presence in Turkey and Northern Iraq?

This paper first presents an overview of no-fly zones as a category of military operations other than war (MOOTW).[9] The second section explores the rationale for no-fly zones and the controls on use of force during these operations. The paper then turns to a general discussion of the nature of rules of engagement and their role during no-fly zone operations. Finally, this paper concludes with an analysis of the specific risks of status-based rules of

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[9] MOOTW is the official term of the Joint Chiefs of Staff (JCS), based on THE JOINT CHIEFS OF STAFF, JOINT PUB 3-07: JOINT DOCTRINE FOR MILITARY OPERATIONS OTHER THAN WAR (1995) [hereinafter, JOINT PUB 3-07]. Still, many military personnel and international law scholars freely mix the terms "contingency operations," "operations other than war" (OOTW), "military operations other than war" (MOOTW), and "low intensity conflicts" (LIC). The author prefers a narrower term applied to a narrower context of just those operations involving the possible use of armed force in an overseas deployment. As explained *infra* at Part I, this writer proposes the term "expeditionary operations" to define those MOOTW activities risking the use of armed force overseas.

See Colonel David A. Fastabend, *The Categorization of Conflict,* Vol. XXVII No. 2 PARAMETERS, at 75-87 (COL Fastabend presents an excellent review on the evolution of the phrase MOOTW as well as commentary about terms used to describe this middle ground of military operations). *See also* Jennifer M. Taw and Alan Vick, *From Sideshow to Center Stage: The Role of The Army and Air Force in Military Operations Other Than War,* pp. 179-212, *in* STRATEGY AND DEFENSE PLANNING FOR THE 21ST CENTURY, (Zalmay M. Khalilzad & David A. Ochmanek eds., Washington, RAND, 1997).

While assigned to Rhein-Main AB, Germany, the author found the phrases "contingency operations" and LIC used frequently, with contingencies being used most frequently by the Air Force. *See e.g.,* AFM 1-1: BASIC AEROSPACE DOCTRINE, Vol. II ("Contingency operations in low intensity conflict are undertaken in crisis avoidance or crisis situations requiring the use of military forces to enforce or support diplomatic initiatives, to respond to emergencies, or to protect the lives of United States citizens." *Id.* at 54). *See also,* DAVID J. DEAN, THE AIR FORCE ROLE IN LOW-INTENSITY CONFLICT 1-18 (Air University 1986); James S. Corum, *Airpower and Peace Enforcement,* AIRPOWER JOURNAL (Air University Winter 1996) 10-25 (Mr. Corum uses LIC and contends that peace enforcement missions belong to "the traditional American category of low-intensity conflict." *Id.* at 11).

engagement during no-fly zone operations from an incident study method,[10] offering lessons learned from the 1994 Black Hawk incident.

Operation PROVIDE COMFORT presents an operational incident to study both the use of force during no-fly zone operations and the resulting risks. Operation PROVIDE COMFORT involved a no-fly zone and experienced an aerial fratricide. The choice of a no-fly zone operation is deliberate. Along the spectrum of military operations other than war, expeditionary no-fly zone operations are politically, militarily and legally intense.[11] Furthermore, Operation PROVIDE COMFORT's Black Hawk fratricide highlights the risks to friendly forces as well as it calls into question the propriety of our use of force in an operational environment short of war. Was there a causal relationship between the status based rules of engagement and the Black Hawk fratricide?[12]

As a matter of style and for consistency, "military operations other than war" is spelled out the first time it occurs in a sentence, followed by the acronym MOOTW.

[10] For more information on the study of incidents, *see generally* W. Michael Reisman, *International Incidents: Introduction to a New Genre in the Study of International Law*, 10 YALE J. INT'L L. 1, at 1-20 (1984); Andrew R. Willard, *Incidents: An Essay in Method*, 10 YALE J. INT'L L. 21, at 21-33 (1984).

[11] *See generally*, Major John N. T. Shanahan, *No Fly Zone Operations: Tactical Success and Strategic Failure* 3-25, in ESSAYS ON STRATEGY (Mary A. Sommerville ed., NDU Press, Washington, 1997).

[12] Just a comment on this paper's approach. Instead of immediately plunging into an analysis of the risks of status-based rules of engagement from the Black Hawk fratricide, this paper builds the necessary factual and legal foundations first. Along the way, the author makes assumptions and limitations to scope the paper down. Upon this foundation of law, facts, and limitations, this paper then analyzes the Black Hawk fratricide for lessons on no-fly zone operations.

II. What Are No-Fly Zones?

To make sense of an international incident arising from a no-fly zone operation one must place the type of operation into perspective. What are no-fly zones and why fly them? A type of military operation other than war, no-fly zones coercively exclude another state from flying in its own airspace in order to protect the fundamental human rights an ethnic group within the subjacent state or to counter aggression by the subjacent state.[13] How do no-fly zone operations mesh with other military operations, national security policy, and law? The following passages place no-fly zone operations within the context of national security policy and military operations.

A. Military Operations Other Than War—Operations From Peace to High Tension[14]

United States political and military leaders count on the nation's armed forces "to respond to crises across the full range of military operations, from humanitarian assistance to fighting and winning major theater wars (MTW), and conducting concurrent smaller-scale

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[13] WEBSTER'S NEW WORLD DICTIONARY (2nd College Edition, 1980) defines "coerce" as: "1. to restrain or constrain by force, esp. by legal authority; curb 2. to force or compel to do something 3. to bring about by using force; enforce." *Id.* at 275. This author uses the noun "coercion," the adjective "coercive," and the verb "coerce" throughout this paper to describe, in context, use of force or threat of use of force by a nation state's military.

[14] *See* D.P. O'CONNELL, THE INFLUENCE OF LAW ON SEA POWER 56-57 (1975) (describing four levels of military force escalation under a theory of 'graduated force': no- or low-tension conditions; rising tension; high-level tension; and hostilities. This author would divide these, as suggested *supra* at note 12, into three levels, while retaining Professor O'Connell's characterizations of the nature of military operations at each level; namely, no-tension (peace), tension, and hostilities (war)); *see also, supra* note 8.

contingencies."[15] Accordingly, US Armed Forces engage in operations along a three-tiered spectrum: war; tension; and, peace.[16] This section focuses on military operations in the middle and at the bottom of the spectrum—military operations other than war.

Military Operations Other Than War "encompass the full range of military operations short of major theater warfare, including humanitarian assistance, peacekeeping, disaster relief, no-fly zones, reinforcing key allies, limited strikes, and interventions."[17] Military operations other than war employ "military capabilities across the range of military operations short of war."[18] What do these operations aim to achieve? Joint doctrine states, "(o)perations other than war are an aspect of military operations that focus on deterring war and promoting peace."[19] The 1997 National Security Strategy (NSS)[20] and the 1997 National

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[15] JOINT CHIEFS OF STAFF, SHAPE, RESPOND, PREPARE NOW: A MILITARY STRATEGY FOR A NEW ERA ii (Executive Summary)(Washington: GPO, 1997)[hereinafter, 1997 NMS].

[16] Diverse examples exist of these three levels. For instance, at the high-end exists combat and declared war, in the middle there is a wide range such as enforcing no-fly zones or naval blockades to freedom of navigation missions, and at the peaceful end of the spectrum are such missions such as civil engineering efforts on national transportation systems and arms control.

This author does not characterize all MOOTW as involving a state of "tension." Clearly many operations involve no tension at all. However, the most challenging aspects of MOOTW and the increased demands on the US military occur in those MOOTW involving coercion—use or threat of force. Still, this author believes US military doctrine writers could clear up a lot of confusion by distinguishing Peace Operations (as detailed in FM 100-23) from "Peaceful Operations." For that matter, why even call a "peaceful" activity an "operation"? We could reserve the phrase "operation" to only those military missions involving some state of tension. The non-tension or peaceful missions would be considered something else, perhaps "duties" or "activities."

[17] THE WHITE HOUSE, A NATIONAL SECURITY STRATEGY FOR A NEW CENTURY 16 (May 1997)[hereinafter, 1997 NSS].

[18] JOINT PUB 3-07 *supra* note 9, at I-1.

[19] THE JOINT CHIEFS OF STAFF, JOINT PUB 3-0: DOCTRINE FOR JOINT OPERATIONS (1995) [hereinafter, JOINT PUB 3-0].

[20] *Supra* note 17.

Military Strategy (NMS)[21] highlight the importance of military operations other than war as a means of securing national policy interests, especially in expeditionary settings.

Military operations other than war thrive in the gray area between war and peace, the middle-tier or tension level of the spectrum of operations.[22] The closer one comes to war on the spectrum, the higher the military tension. Such tension often exists in the context of crisis deterrence. Military operations other than war often occur as an effort to deter aggression, to maintain peace, or to coercively stop some other crisis. "When efforts to deter an adversary occur in the context of a crisis, they become the leading edge of crisis response. In this sense, deterrence straddles the line between shaping the international environment and responding to crises."[23]

Primarily, US Armed Forces deploy to conduct the middle-tier military operations. Trends suggest US Armed Forces will see increased involvement in military operations other than war over the next decade. Indeed, the 1997 NSS declares that "(t)hese operations will likely pose the most frequent challenge for U.S. forces and cumulatively require significant commitments over time."[24] These operations share common principles regardless of where they exist along the spectrum of force application.

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[21] *Supra* note 15.

[22] O'Connell, *supra* note 14, at 56.

[23] *Supra* note 17, at 16.

[24] *Id.*

1. Principles of Military Operations Other Than War—Both Joint doctrine and Army doctrine identify six principles[25] of military operations other than war:

a. *Objective*—Direct every military operation toward a clearly defined, decisive, and attainable objective;[26]

b. *Unity of Effort*—Seek unity of effort toward every objective;[27]

c. *Security*—Never permit hostile factions to acquire an unexpected advantage;[28]

d. *Restraint*—Apply appropriate military capability prudently;[29]

e. *Perseverance*—Prepare for the measured, protracted application of military capability in support of strategic aims;[30] and,

f. *Legitimacy*—Sustain the willing acceptance by the people of the right of the government.[31]

2. Types of Military Operations Other Than War—Whereas Army doctrine recognizes thirteen separate types of military operations other than war,[32] the latest Joint doctrine recognizes sixteen categories:[33]

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[25] Joint Pub 3-07, *supra* note 9, at II-1 to II-5; U.S. DEP'T OF ARMY, FIELD MANUAL 100-5, OPERATIONS 13-3 to 13-4 (June 1993) [hereinafter, FM 100-5].

[26] FM 100-5, *id.* at 13-3.

[27] *Id.* at 13-4.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.* at 13-5 to 13-8 lists the following: Noncombatant Evacuation Operations; Arms Control; Support to Domestic Civil Authorities; Humanitarian Assistance and Disaster Relief; Security Assistance; Nation

a. *Arms Control*—Activities, based on international agreement, that help reduce threats to regional security such as weapons destruction or reducing conventional troop strengths;[34]

b. *Combating Terrorism*—Opposing terrorism wherever it occurs. This activity has two main components, anti-terrorism (passive defense measures) and counter-terrorism (all offensive measures to prevent, deter, or preempt terrorist acts);[35]

c. *DOD Support to Counterdrug Operations*—DOD assistance to U.S. law enforcement agencies to disrupt the flow of illegal drugs into our nation;[36]

d. *Enforcement of Sanctions/Maritime Intercept Operations*—Military operations that uses coercive measures to stop the export or import of selective goods to compel compliance with the political aims of the sanctioning entity;[37]

Assistance; Support to Counterdrug Operations; Combating Terrorism; Peace Enforcement; Peacekeeping Operations; Show of Force; Support for Insurgencies and Counterinsurgencies; and, Attacks and Raids.

[33] JOINT PUB 3-07, *supra* note 9, at III-1 to III-15. *See also* VOL. II AFM 1-1, BASIC DOCTRINE OF THE UNITED STATES AIR FORCE at 56 [hereinafter, AFM 1-1] (the Air Force doctrine manual lists 34 MOOTW examples. All 34 fit within a JOINT PUB 3-07 category.).

[34] JOINT PUB 3-07, *Id.* at III-1 to III-2. An example is the U.S. On-Site Inspection Agency-Europe's conduct of site inspections in Europe to measure compliance with the Conventional Armed Forces in Europe Treaty.

[35] *Id.* at III-2.

[36] *Id.* at III-3, detailing three main DOD counterdrug responsibilities:

> Act as the single lead agency for detecting and monitoring aerial and maritime transit of illegal drugs into the United States…; Integrate the command, control, communications, computer, and intelligence assets of the United States that are dedicated to interdicting the movement of illegal drugs…; (and,) Approve and fund State governors' plans for expanded use of the National Guard to support drug interdiction and enforcement agencies.

[37] *Id.* at III-3 to III-4.

e. *Enforcing Exclusion Zones*—Military operations to prevent certain specified uses, within a specific land, sea, or airspace usually in response to serious human rights violations or other abuses of international law;[38]

f. *Ensuring Freedom of Navigation and Overflight*—Activities that demonstrate US exercise of international rights to fly over international airspace, to sail through international sea routes, and to exercise the maritime right of "innocent passage" through a coastal state's territorial waters;[39]

g. *Humanitarian Assistance (HA)*—Military operations to "relieve or reduce the results of natural or manmade disasters";[40]

h. *Military Support to Civil Authorities (MSCA)*—"(T)emporary support to domestic civil authorities when permitted by law,"[41] most often during emergency situations that overwhelm state or local civil authorities;[42]

i. *Nation Assistance/Support to Counterinsurgency*—Activities based on mutual agreement to support a foreign nation "by promoting sustainable development and

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[38] *Id.* at III-4. *See also, infra* at Part II-C (for more detail on exclusion zones, including a definition from DOD DICTIONARY, JOINT PUB 1-02); Shanahan, *supra* note 11.

[39] *Supra* note 19 at III-4.

[40] *Id.* at III-4 to III-8.

[41] *Id.* at III-8.

[42] *Id.* at III-8 to III-9. Concerns for the judge advocate here include compliance with the Economy Act, 31 U.S.C. 1535, which may require reimbursement from supported agencies; the Posse Comitatus Act, 18 U.S.C. 1385, which limits use of the military to enforce domestic laws; and, the statutory exceptions to the Posse Comitatus Act found in Title 10 US Code (notably 10 U.S.C. 331, 332, 333 and 371-380). DOD Directive 5525.5, DOD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS, (1986) regulates logistical support, use of equipment, training, and transfer of information. DOD Directive 3025.1, MILITARY SUPPORT TO CIVIL AUTHORITIES designates the Secretary of the Army as the DOD Executive Agent of the MSCA program, *as cited in* U.S. ARMY INT'L L. & OPERATIONAL L. DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, PUB JA-422, OPERATIONAL LAW HANDBOOK (1997)[hereinafter OPS LAW HANDBOOK] Chapters 21, *Military Support to Civil Authorities,* and Chapter 22, *Military Support to Civilian Law Enforcement Agencies.*

growth of responsive institutions. The goal is to promote long-term regional stability;"[43] Nation Assistance's three main components are Foreign Internal Defense (FID),[44] Humanitarian and Civic Assistance (HCA),[45] and Security Assistance.[46]

j. *Noncombatant Evacuation Operations (NEO)*—Operations to relocate US citizens and allied noncombatants from threat in a foreign country to safety;[47]

k. *Peace Operations*—"(M)ilitary operations to support diplomatic efforts to reach a long-term political settlement."[48] The two categories of peace operations are peacekeeping (PK) operations and peace enforcement (PE) operations;[49]

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[43] *Supra* note 9, at III-9.

[44] FID is primarily a special operations mission. *See* THE JOINT CHIEFS OF STAFF, JOINT PUB 3-07.1: JTTP FOR FOREIGN INTERNAL DEFENSE (1996) [hereinafter, JOINT PUB 3-07.1].

[45] Authorized under 10 U.S.C. Section 401. HCA is not the same as HA (*see supra* note 44).

[46] *Supra* note 9, at III-9 to III-10. Two examples of security assistance are Foreign Military Sales (FMS) and the International Military Education and Training Program (IMETP).

[47] *Id.* at III-11 to III-12, which also states:

> NEOs are similar to a raid in that the operation involves swift insertion of a force, temporary occupation of objectives, and ends with a planned withdrawal. It differs from a raid in that forced used is normally limited to that required to protect the evacuees and the evacuation force. ... Pursuant to Executive Order 12656, the DOS (Department of State) is responsible for the protection and evacuation of American citizen's abroad.... This order also directs the DOD to assist the DOS in preparing and implementing plans for the evacuation of US citizens.

See also OPS LAW HANDBOOK, *supra* note 43, at Chapter 26, *Noncombatant Evacuation Operations.*

[48] *Supra* note 9, at III-12. Joint Pub 3-07 defines PK (or PKO) and PE operations. Peacekeeping operations (PK or PKO) "are military operations undertaken with the consent of all major parties to a dispute, designed to monitor and facilitate implementation of an agreement (cease fire, truce, or other such agreements) and support diplomatic efforts to reach a long-term political settlement." *Id.* Meanwhile, peace enforcement operations (PE or PEO) "are the application of military force, or threat of its use, normally pursuant to international authorization, to compel compliance with resolutions or sanctions designed to maintain or restore peace and order." *Id.* at III-13.

l. *Protection of Shipping*—Military operations to protect US citizens and US flagged vessels "against unlawful violence in and over international waters."[50] These operations also include "coastal sea control, harbor defense, port security, countermine operations, and environmental defense, in addition to operations on the high seas;"[51]

m. *Recovery Operations*—"(C)conducted to search for, locate, identify, rescue, and return personnel or human remains, sensitive equipment, or items critical to national security;"[52]

n. *Show of Force Operations*—Military operations "designed to demonstrate US resolve."[53] These operations increase the presence of US forces deployed abroad to defuse or deter situations adverse to US national interests;[54]

o. *Strikes and Raids*—"Strikes are offensive operations conducted to inflict damage on, seize, or destroy an objective for political purposes."[55] Meanwhile, raids are

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[49] *See* FM 100-23 *supra* note 8, at 4-12 (provides an excellent overview of PK and PE operations). *See also* Dr. Steven Metz, *The Air Force Role in United Nations Peacekeeping*, AIRPOWER JOURNAL (Air University, Winter 1993) at 68-81 (providing commentary on expanded US military involvement in UN Chapter VI and Chapter VII operations. Dr. Metz anticipates additional requirements for successful use of airpower in support of UN peace operations, including aerial exclusion zones); Lt Col Brooks L. Bash, *Airpower and Peacekeeping*, , AIRPOWER JOURNAL (Air University, Spring 1995) at 66-78 (identifying airpower's limitations and contributions to peacekeeping operational areas of command and control, communication, intelligence, mobility, and force protection.).

[50] *Supra* note 9, at III-14.

[51] *Id.* JOINT PUB 3-07 describes a combination of operations used to protect shipping. These are primarily area operations, escort operations, and mine countermeasures operations. All three operations require "the coordinated employment of surface, air, space, and subsurface units, sensors, and weapons, as well as a command structure both ashore and afloat, and a logistics base." *Id.*

[52] *Id.*

[53] *Id.* at III-14.

[54] *Id.* at III-14 to III-15.

smaller scale military operations "involving swift penetration of hostile territory to secure information, confuse the enemy, or destroy installations."[56] And,

p. *Support to Insurgency*—Primarily logistic support and training operations to support an "organized movement aimed at the overthrow of a constituted government"[57] that threatens US national interests.

Not all military operations other than war require the use of force,[58] for example, Arms Control. Still other operations are low- to no-threat operations, such as most Military Support to Civilian Authorities operations,[59] Nation Assistance missions, and Security Assistance programs. In addition, not all military operations other than war involve deploying forces overseas, for example, DOD Support to Counterdrug Operations and, again, Military Support to Civil Authorities are examples. The phrase "expeditionary operations"[60] implies military action in a deployed setting. This paper focuses on those expeditionary operations where the US prepares to use of force to meet mission objectives.

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[55] *Id.* at III-15.

[56] *Id.*

[57] *Id.*

[58] *See* FM 100-5, *supra* note 25, at 13-4.

[59] *But see,* Operation GARDEN PLOT ROE and Los Angeles Riots as an example where use of force may actually occur in a domestic setting. Consideration of domestic use of force is beyond the scope of this paper.

[60] *See also, supra* note 9 (explaining this author's use of the term "expeditionary operations").

B. Expeditionary Operations—Overseas Military Coercion

Expeditionary operations are therefore those military operations other than war, conducted overseas, which often risk the use force. Specifically defined, expeditionary operations are those MOOTW missions that are task organized and tailored to accomplish a specific national security mission, in a foreign state or over international waters, usually during an environment of tension.[61] It follows then that the US commits expeditionary forces to accomplish these missions. Tension, in this sense, means there is some risk of hostile engagement and use of armed force during the operation.[62] Expeditionary "implies the capability to move, on short notice, to a distant location."[63] Inherent to these operations is the ability to accomplish the specific mission with little or no reliance on external assistance.[64]

US political and military leaders fully anticipate the use of tailored military expeditionary forces to accomplish national goals. According to the NSS, "US military forces provide a full array of capabilities that can be tailored to give the NCA many options in pursuing our interests."[65] Ideally, American leaders will tailor any expeditionary unit to have organic elements of command and control, force firepower, force maneuver, force support, and force

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[61] DOD DICTIONARY, *supra,* note 7, at 136, defines an "expeditionary force" as "(a)n armed force organized to accomplish a specific objective in a foreign country." The link between the various mission types is the deployed status of forces.

[62] *See, e.g.,* O'Connell, *supra* note 14.

[63] ACSC PUB NO. AU-16: EMPLOYMENT OF NAVY AND MARINE FORCES 89 (Air University Press, Maxwell AFB, Alabama, August 1994).

[64] *Id.*

[65] *Supra* note 15, at 13.

sustainability. Of course, the political goal of a mission and the potential threat determine the military tailoring.[66]

Policy objectives also impact the use of force during our expeditionary operations.[67] This impact occurs most often as restraint, reflected in the operation's rules of engagement.[68] According to DOD joint doctrine, "(i)n operations other than war, these ROE will often be more restrictive, detailed, and sensitive to political concerns than in war."[69] Accordingly, our forces require greater training during expeditionary operations to prevent an international incident from arising by misuse of force.[70]

Found between war and peace, expeditionary operations share tension as a common denominator. The tension arises first from an increased possibility of combat or threats of an opponent's use of force.[71] Tension also comes from the increasingly political and legal nature of expeditionary operations. "Mobilization of forces in modern war includes not only

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[66] Dr. John W. Jandora, *Threat Parameters for Operations Other Than War*, VOL. XXV NO. 1 PARAMETERS 55-67 (1995) (Dr. Jandora suggests an analytical framework for assessing three categories of nontraditional threats in MOOTW: armed forces, criminal organizations, and factional forces).

[67] JOINT PUB 3-0, *supra* note 19, at V-3.

[68] *Id.*

[69] *Id.*

[70] *Id.* (JOINT PUB 3-0 explains that "(t)he reasons for the restraint often need to be understood by the individual Service member because a single act could cause critical political consequences." *Id.*).

[71] *See* David Jablonsky, *US Military Doctrine and the Revolution in Military Affairs,* VOL XXIV No. 3 PARAMETERS 30 (Autumn 1994) (quoting GEN Odom, "operations other than war do not necessarily exclude combat.").

the military, but to a significant degree, the political, economic, and social sectors."[72] The policy interests often result in the involvement of other instruments of national power during these operations. "MOOTW are more sensitive to political considerations and often the military may not be the primary player. More restrictive rules of engagement and a hierarchy of national objectives are followed. ... All military personnel should understand the political objective and the potential impact of inappropriate actions."[73] Indeed, this politico-legal intensity is a reality for the modern warrior.[74]

The Army, Navy, Air Force, and Marine Corps all participate in expeditionary operations other than war.[75] Each service's most current doctrine reflects an expectation to increase their respective participation in single service and joint expeditionary operations.[76] A comparison between two of the services illustrates the trend.

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[72] Catholic Bishops, 1983, *reprinted in* WAR, MORALITY AND THE MILITARY PROFESSION 251 (Malham M. Wakin ed., 1986).

[73] JOINT PUB 3-07, *supra* note 9, at 20. As to ROE, *see, infra* at Part V. *See also* FM 100-23, *supra* note 8 (stating, "ROE are developed by military commanders and must consider the direction and strategy of political leaders."); AIR FORCE PAMPHLET 3-20: MILITARY OPERATIONS IN LOW INTENSITY CONFLICT 5-2, (noting "(t)he commander must provide for the security of his force within the constraints of the unique ROE and the political sensitivity of each situation."); JTF COMMANDER'S HANDBOOK FOR PEACE OPERATIONS 75 (Joint Warfighting Center 28 Feb 1995) (stating, "ROE impose political, tactical, and legal limitations upon commanders but really delineate how you intend to use force and maneuver to protect your force and to prosecute your mission.").

[74] "Soldiers must understand the nuances of changing military political, economic, and cultural dimensions and have the agility to alter our military actions quickly in a dynamic environment." GEN Gordon R. Sullivan and Andrew R. Twomey, *The Challenges of Peace,* VOL. XXIV No. 3 PARAMETERS 5 (Autumn 1994).

[75] *See generally*, JOINT PUB 3-0, *supra* note 19; JOINT PUB 3-07 *supra* note 9.

[76] In addition to the Marine Corps and Air Force service doctrine, discussed *infra, see* FORWARD... FROM THE SEA (Department of the Navy ed., 1996)(the Navy's vision for 21st Century); TRADOC PAMPHLET 525-5 FORCE XXI (Army Training and Doctrine Command ed., 1 Aug. 1994)[hereinafter, FORCE XXI](TRADOC's vision for future Army force structure and deployment).

The Marine Corps and the Air Force are respectively the oldest and newest armed services to embrace the expeditionary concept. The United States Marine Corps enjoys the longest tradition of expeditionary operations. "The Marine Corps, with its long-standing amphibious characteristics, can be thought of as this country's premier expeditionary force-in-readiness."[77] The Marine Corps focuses on combined arms operations in an expeditionary role.

On the other hand, the Air Force has just recently embraced the expeditionary idea. "The Air Force will develop new ways of doing mobility, force deployment, protection, and sustainability in support of the expeditionary concept."[78] The Air Force began modern task

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According to the Navy,

> Our most recent experiences, however, underscore the premise that the most important role of naval forces in situations short of war is to be *engaged* in forward areas, with the objectives of *preventing* conflicts and *controlling* crises.
>
> Naval Forces thus are the foundation of peacetime forward presence operations and overseas response to crisis. They contribute heavily during the transitions from crisis to conflict and to ensuring compliance with terms of peace. At the same time, the unique capabilities inherent in naval expeditionary forces have never been in higher demand from U.S. theater commanders—the regional Commanders-in-Chief—as evidenced by operations in Somalia, Haiti, Cuba, and Bosnia, as well as our continuing contribution to the enforcement of United Nations sanctions against Iraq.

Id. at 1. Similarly, Army TRADOC maintains:

> Strategic interests have increased the number and expanded range of OOTW that the armed forces will be required to perform. At times OOTW may exhibit characteristics of conflict and involve violent combat. When conducting such operations, the Army may find itself engaged against forces, including nonnation state armies operating outside Western convention.

Force XXI, *Id.* at 1-4.

[77]AU PUB 16, EMPLOYMENT OF NAVY AND MARINE FORCES at 90 (Air University ed., 1996).

[78] GLOBAL ENGAGEMENT: A VISION FOR THE TWENTY-FIRST CENTURY AIR FORCE (AF/XPX August 1996).

organized or tailored air operations with the composite wing concept,[79] which proved dramatically successful during the 1991 Persian Gulf War.[80] Consequently, the Air Expeditionary Force (AEF) concept evolved directly from the composite wing approach.[81]

An AEF is a tailored multi-role airpower package, deployable by the national command authorities (NCA) to support regional CINCs to rapidly increase combat airpower in a specific theater or area of responsibility (AOR).[82] The basic AEF package contains aircraft for three roles: air superiority, precision strike, and suppression of enemy air defenses (SEAD).[83] "This expeditionary force can be tailored to meet the needs of the Joint Force Commander, both for lethal and non-lethal applications, and can launch and be ready to fight in less than three days."[84] Air expeditionary units first deployed to southwest Asia to support US operations in 1996.[85] "Currently, the Air Force is increasing the role of expeditionary

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[79] *See* Lt Col Philip S. Meilinger, *The Air Force in the Twenty-first Century: Challenge and Response,* AIRPOWER JOURNAL 34-51 (Winter 1990).

[80] Brigadier General Lee A. Downer, *The Composite Wing in Combat,* AIRPOWER JOURNAL 4-16 (Winter 1991).

[81] GLOBAL ENGAGEMENT: A VISION FOR THE TWENTY-FIRST CENTURY AIR FORCE (AF/XPX August 1996). For an overview of the EAF concept online, *see*: <**http://www.af.mil/news/Aug1998/n19980824_981264.html**>.

[82] Brigadier General William R. Looney, III, *The Air Expeditionary Force: Taking the Air Force into the Twenty-first Century,* Vol. X, No.4 AIRPOWER JOURNAL 4-9 (Winter 1996).

[83] *Id.* at 6.

[84] USAF AIR STAFF, GLOBAL ENGAGEMENT: A VISION FOR THE TWENTY-FIRST CENTURY AIR FORCE 1 (1996). For more information about the AEF concept online, *see* <**http://www.af.mil/cgi-bin/multigate/retrieve?u=z3950r://dtics11:1024/airforce!F90049%3a920852293%3a%28AEF%29;esn=FT%5fTEXT%20HTML%200;ct=text/html**>.

[85] Operation AEF JORDAN. ("After three months in Jordan, the 4417th Air Expeditionary Force is redeploying its people and equipment back to the United States. The AEF has successfully completed its mission of testing the concept and building American-Jordanian relationships, while participating in Operation Southern Watch over Iraq."); 417th AEF/PA (AFNS, 1996); available online at: **http://www.af.mil/cgi-**

forces to maintain its global engagement capability."[86] It seems clear that America's military forces remain prepared to stay actively involved in expeditionary operations for the rest of this decade and well into the next century.

C. Exclusion Zone Operations

A brief overview of exclusion zones, a distinct category of MOOTW, distinguishes them from confusingly similar operations and clarifies the differences between: (a) enforcing exclusion zones as an operation other than war; and, (b) conducting exclusion zones at war. These differences become important in analysis of the operational considerations and legal regimes governing coercion of no-fly zones. This paper earlier defined "enforcing exclusion zones" as a type of military operation other than war.[87] The DOD Dictionary offers the following definition:

> exclusion zone—A zone established by a sanctioning body to prohibit specific activities in a specific geographic area. The purpose may be to persuade nations or groups to modify their behavior to meet the desires of the sanctioning body or face continued imposition of sanctions, or use or threat of force.[88]

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bin/multigate/retrieve?u=z3950r://dtics11:1024/airforce!F58337%3a920852293%3a%28AEF%29;esn=FT%5fTEXT%20HTML%200;ct=text/html>.

[86] *Supra* note 84.

[87] *Supra* note 38 and accompanying text.

[88] DOD DICTIONARY, *supra* note 7 at 149.

The Joint Doctrine for Military Operations Other Than War manual takes the same definition and expands it as a coercive military operation short of war:

> Enforcing Exclusion Zones. A sanctioning body to prohibit specific activities in a specific geographic area establishes an exclusion zone. Exclusion zones can be established in the air (no-fly zones), sea (maritime), or on land. The purpose may be to persuade nations or groups to modify their behavior to meet the desires of the sanctioning body or face continued imposition of sanctions, or use or threat of force. ... The sanctions may create economic, political, military, or other conditions where the intent is to change the behavior of the offending nation. Examples of enforcement of exclusion zones are Operation SOUTHERN WATCH in Iraq, initiated in 1992, and Operation DENY FLIGHT in Bosnia, initiated in 1993.[89]

The Joint language of the American military infers that the US views exclusion zones only as operations other than war. However, as discussed next, various examples of both peacetime and wartime exclusion zones or security zones exist and lend to confusion of the term "exclusionary zone" as a legal term of art in the law of armed conflict.

Several nations assert a "declared security zone"[90] or "military boundary zone"[91] extending from their coast out beyond their territorial sea and into the contiguous zone and high seas.[92] These peacetime security zone claims violate international law as codified in

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[89] JOINT PUB 3-07, *supra* note 9, at III-4.

[90] J. ASHLEY ROACH & ROBERT W. SMITH, EXCESSIVE MARITIME CLAIMS 103-108 (U.S. Naval War College International Law Studies No. 66, 1994) [hereinafter Roach & Smith] (listing 17 coastal states claiming expanded contiguous zones to protect "national security interests." *Id.*, at 106).

[91] North Korea claims a 50-mile wide "military boundary zone." James R. Boma, *Troubled Waters off the Land of the Morning Calm: A Job for the Fleet*, READINGS ON INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1978-1994, 197, at 202-207 (U.S. Naval War College International Law Studies No. 68, Moore & Turners eds., 1995)[hereinafter, MOORE & TURNER]; Roach & Smith, *supra* note 86, at 106 and note 13.

three treaties: the Convention on the High Seas;[93] the Territorial Sea Convention;[94] and the UN Convention on the Law of the Sea.[95] Accordingly, no State may appropriate the high seas beyond the hulls of its ships during peacetime.[96]

Security zones flourished during times of military tension. Historical examples abound from the Russo-Japanese War,[97] World War I,[98] World War II,[99] the Falklands War,[100] and the

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[92] *See generally*, Frederick C. Leiner, *Maritime Security Zones: Prohibited Yet Perpetuated,* 24 VA J INT'L L. 967-992 (1984); W.J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 26 CAN. YBK. INT'L L. 91-126 (1986).

[93] Convention On The High Seas, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 [hereinafter High Seas Convention]. Done at Geneva on Apr. 29, 1958; entered into force on Sept. 30, 1962. *Id.* Article 2

[94] Convention On The Territorial Sea And The Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter Territorial Sea Convention]. Done at Geneva on Apr. 29, 1958; entered into force on Sept. 10, 1964. *Id.* Article 24.

[95] United Nations Convention On The Law Of The Sea, 1982 [hereinafter, UNCLOS]. Article 33 (reprinted in Henkin et al, Basic Documents Supplement 93, at 103).

[96] Paraphrasing Justice Story in *The Marianna Flora.* Justice Story maintained:

> Upon the ocean, then, in time of peace, all possess an entire equality. It is the common highway of all, appropriated to the use of all; and no one can vindicate to himself a superior or exclusive prerogative there....
>
> It has been argued , that... every ship has a right to draw round her a line of jurisdiction, within which no other is at liberty to intrude. In short, that she may appropriate so much of the ocean as she may deem necessary for her protection, and prevent any nearer approach
>
> This doctrine appears to us novel, and is not supported by any authority. It goes to establish upon the ocean a territorial jurisdiction, like that which is claimed by all nations within cannon shot of their shores, in virtue of their general sovereignty. But the latter right is founded upon the principle of sovereign and permanent appropriation, and has never been successfully asserted beyond it. Every vessel undoubtedly has a right to the use of so much of the ocean as she occupies, and as is essential to her own movements. Beyond this, no exclusive right has ever yet been recognized.

The Marianna Flora, 24 U.S. [11 Wheat.] 1, 42-44 (1826).

[97] "Japan made the first minor effort in this century to establish an exclusion zone during the Russo-Japanese War...." Fenrick, *supra* note 92, at 95.

Iraq-Iran War.[101] The inherent right of individual or collective self-defense justified the creation of these zones, although the practice varied in each conflict.[102] The United States practice is to create "defensive sea areas" or "maritime control areas only during war or declared national emergencies.[103] During these times of crisis , the President is statutorily authorized to declare defensive sea areas beyond the US territorial sea.[104]

Exclusion zones evolved from, but are not the same as, the declared defensive zones and security zones. Exclusion zones *per se* also enjoy a wartime role. Whether described as bubble zones,[105] *cordone sanitaire*,[106] operational zones,[107] or war zones,[108] these zones are all

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[98] During World War I, both the British and the Germans declared war zones. However their means of enforcing such zones as well as their justifications were markedly distinct. Fenrick, *Id.* at 95-98.

[99] An example from WWII was the German declared war zone around the British Isles. The German submarine warfare practices in the zone yielded the trial of Admiral Doenitz trial at Nuremberg. O'Connell, *supra* note 14, at 50.

[100] *See* Boma, *supra* note 92, at 207(describing the British practice during the war with Argentina over the Falkland Islands); Commander Christopher Craig, D.S.C., Royal Navy, *Fighting by the Rules, in* MOORE & TURNER *supra* note 91, at 315-319 (Commander Craig, Commanding Officer of *HMS Alacrity* during the Falklands War describes the British maritime exclusion zone (MEZ) and subsequent total exclusion zone (TEZ) around Argentina); Fenrick *supra* note 92, at 109-116; and, Leiner, *supra* note 92 at 988-991 (for details on the British TEZ).

[101] *See* J. Ashley Roach, *Missiles on Target: Targeting and Defense Zones in the Tanker War*, 31 VA. J. INT'L L. 595-610 (1991); Frank V. Russo, Jr., *Neutrality at Sea in Transition: State Practice in the Gulf War as Emerging International Customary Law*, 19 OCEAN DEVELOPMENT & INT'L L. 381-399 (1988); Maxwell Jenkins, *Air attacks on Neutral Shipping in the Persian Gulf: The Legality of the Iraqi Exclusion Zone and Iranian Reprisals*, 8 B.C. INT'L & COMP. L. REV. 517-549 (1985).

[102] ANNOTATED SUPPLEMENT TO THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS PART I - LAW OF PEACETIME NAVAL OPERATIONS Section 2.2.4 at 2-23 and note 68 (1997) [hereinafter, Annotated Naval Commander's Handbook].

[103] *Id.*

[104] 18 U.S.C. Sec. 2152 (1988). Discussed in Annotated Naval Commander's Handbook, *supra* note 102, at note 68 and accompanying text.

[105] *See* Michael N. Schmitt, *Aerial Blockades in Historical, Legal, and Practical Perspective*, 2 USAF ACAD. JRN'L LGL. STUDIES 21, at 22 (1991)[hereinafter, *Aerial Blockades*](describing bubble zones).

variations on a theme of belligerence. In each case, a nation anticipates use of force. The nation then declares a zone of coercive influence over the sea and airspace above it wherein military force may be used, offensively or defensively, according to the terms announced by the instituting nation, against any ships or aircraft that intrude or transit the zone without permission.[109]

A final distinction must be made between exclusionary zones and blockades. Simply defined, blockades are coercive operations designed to prevent entry by all vessels, belligerent and neutral, into a specific port or area.[110] "Exclusion zones are different from more traditional blockade zones because in blockade zones the primary risk is that of capture, while in exclusion zones it is, frequently, the risk of attack on sight."[111] In another

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[106] *See* Stanley F. Gilchrist, *The Cordone Sanitaire—Is It Useful? Is It Practical?*, NAV. WAR C. REV. 60-72 (May-June 1982).

[107] *See* O'Connell, *supra* note 14, at 164-68 (describing operational zones as both defensive zones and as a "moving war zone" around the vessels of belligerents).

[108] *Id.* at 49, 50, and 166-68. *See* Fenrick, *supra*, note 91, at 91-94 (discussing war zones).

[109] According to Fenrick,

> An exclusion zone, also referred to as a military area, barred area, war zone or operational zone, is an area of water and superjacent air space in which a party to an armed conflict purports to exercise control and to which it denies access to ships and aircraft without permission. It thus interferes with the normal rights of passage and overflight of ships and aircraft of non-parties. Unauthorized ships or aircraft entering the zone do so at the risk of facing sanctions, often including being attacked by missiles, aircraft, submarines, or surface warships, or of running into minefields.

Id. at 92.

[110] Schmitt, *supra* note 105, at 21.

[111] Fenrick, *supra* note 92, at 92.

distinction, blockades must be impartially enforced; meanwhile, exclusion zones are selectively employed.[112]

Exclusion zone operations enjoy a colorful and distinctly naval history.[113] Their historical use demonstrates both a wartime use and a use short of war. The military operation other than war involves enforcing exclusion zones to deter aggression or to prevent serious human rights violations. In review, exclusionary zones are distinct operations, easily confused with peacetime security zones, wartime force protection measures, and blockades. While naval enforcement of maritime exclusion zones continued, no-fly zones emerged over the last decade, as modern aerial counterparts to the maritime exclusion zones in operations other than war.[114]

D. No-Fly Zone Operations

This section aims to provide operators and judge advocates with a sense of the national security policy, military strategy, and history behind no-fly zones as part of the MOOTW category of exclusion zone operations. This section demonstrates that, along the spectrum of operations, no-fly zones are politically, militarily, and legally intense. No-fly zones create an aerial exclusion zone—denying the opposing force use of airspace to either threaten a civilian population on the ground[115] or forcefully acquire territory.[116] Although the US may act alone,

[112] Schmitt, *supra* note105, at 23.

[113] Fenrick *supra* note 92.

[114] Shanahan, *supra* note 11.

the UN or other international organizations to which the US belongs most often impose no-fly zones.[117] An opposing force's aggression, in violation of international law,[118] or that force's violation of an ethnic group's human rights on a grand scale[119] provide the justification for imposing an exclusion zone. In short, no-fly zones exist to deter and to protect.

"Our capacity to perform ... no-fly zone and sanctions enforcement operations ... and other missions allows us to deter would-be aggressors and control the danger posed by rogue states."[120] The strategic aim of no-fly zones is deterrence of aggression or protection of threatened populations by exclusive air superiority.[121] Once enforcing powers control the airspace, opposing forces are left with polar-opposite choices: conduct ground operations to meet their goals or change their behavior and goals to satisfy the demands of the powers imposing the exclusionary no-fly zone. No-fly zones possess three main characteristics: (1) the nature of a military expedition; (2) a purpose to enforce or attain national security policy objectives; and, (3) the need for legitimacy in both purpose and conduct.

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[115] JOINT PUB 3-07, *supra* note 9, at III-4.

[116] *Id.*

[117] *Id.*; Shanahan, *supra* note11; Major Michael V. McKelvey, Airpower in MOOTW: A Critical Analysis of Using No-Fly Zones to Support National Objectives (March 1997)(unpublished research paper, Air Command and Staff College)(on file with author) (*available in* Air University database, File No. AU/ACSC/0150/97-03).

[118] Such as deterrence of Saddam Hussein's Iraqi aggression or to prevent continued aggression in the Balkans between the warring ethnic factions of The Former Yugoslavia.

[119] JOINT PUB 3-07, *supra* note 9.

[120] NMS, *supra* note 15 (emphasis added).

[121] McKelvey, *supra* note 117; Shanahan *supra* note 11, at 4.

1. No-Fly Zones as Military Expeditions

As military operations, no-fly zones use armed force to coercively exclude another state from flying in its own airspace. This method aims to protect the fundamental human rights an ethnic group within the subjacent state or to counter aggression by the subjacent state. The recent history of US no-fly zone operations provides only three examples of these expeditionary operations.[122] Operation PROVIDE COMFORT was the first no-fly zone operation.[123] It was soon followed by Operation SOUTHERN WATCH in August 1992. In the Balkans we began Operation DENY FLIGHT.[124]

US no-fly zone enforcement has a modern, brief history.[125] The first no-fly zone operation began with Operation PROVIDE COMFORT over northern Iraq in 1991 to protect Kurdish Iraqis above the 36th parallel.[126] United Nations Security Council resolutions 678,[127]

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[122] Shanahan, *Id.*

[123] Operation NORTHERN WATCH is merely a scaled-down version of its predecessor, Operation PROVIDE COMFORT. *See* Lale Sariibrahimoglu, *Turkey Ends Iraq 'Comfort' Mandate,* JANE'S DEFENCE WEEKLY, Dec. 11, 1996, at 3, *available in* 1996 WL 9482942 (reporting that OPC would be replaced by a limited aerial reconnaissance mission after the coalition ground component is removed from northern Iraq. The new operation would be called 'NORTHERN WATCH.').

[124] John Pomfret, *First US Troops Arrive in Balkans,* WASHINGTON POST, 6 July 1993, A1, A11.

[125] Shanahan, *supra* note 11.

[126] Operation NORTHERN WATCH is merely a scaled-down version of its predecessor, Operation PROVIDE COMFORT (OPC). *See* Lale Sariibrahimoglu, *Turkey Ends Iraq 'Comfort' Mandate,* JANE'S DEFENCE WEEKLY, Dec. 11, 1996, at 3, *available in* 1996 WL 9482942 (reporting that OPC would be replaced by a

687[128] and 688[129] provided the legal basis for the no-fly zone. Initially imposed by a coalition that included Britain, France, Turkey, and the United States, Turkey renamed the no-fly zone Operation NORTHERN WATCH after France withdrew from the mission in 1996 and the US ground component withdrew its large presence from northern Iraq.

Operation SOUTHERN WATCH followed in August 1992 over southern Iraq.[130] The southern no-fly zone protected Shiite Muslims in Iraq below the 32nd parallel. The legal basis rested in Security Council Resolutions 678, 687, 688, and 949.[131] In 1996, the U.S. extended the no-fly zone to the 33rd parallel in response to Saddam Hussein's continued military aggression against Kurdish factions in northern Iraq.[132]

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limited aerial reconnaissance mission after the coalition ground component leaves northern Iraq. The new operation would be called 'NORTHERN WATCH.'). See Operation NORTHERN WATCH Fact Sheet on line at <**http://www.incirlik.af.mil/onw/**>.

[127] SC Res. 678 (Nov. 29, 1990), 29 I.L.M. 1565 (1990).

[128] SC Res. 687 (Apr. 3, 1991), 30 I.L.M. 847 (1991); available online at: <**gopher://gopher.undp.org/00/undocs/scd/scouncil/s91/4**>.

[129] SC Res. 688 (Apr. 5, 1991), 30 I.L.M. 858 (1991); available online at: <**gopher://gopher.undp.org/00/undocs/scd/scouncil/s91/5**>.

[130] Operation SOUTHERN WATCH enforces a no-fly zone and a no-drive zone while supporting maritime intercept operations. Started in August 1992, the no-fly zone was originally enforced over the Iraqi airspace south of the 32nd parallel to protect Shiite Muslim Iraqis. The US expanded the no-fly zone in 1996. The US acted in response to Saddam Hussein's military action in northern Iraq on behalf of one of the rival Kurdish factions. "The mission of Operation SOUTHERN WATCH is: plan, and if directed, conduct an air campaign against Iraqi targets as means of compelling Iraq to comply with United Nations Security Resolution 687 which calls for UN inspections." 4404th Wing (Provisional) Fact Sheet (Current as of 16 Nov 1998), available on line at: <<**http://www.eucom.mil/operations/osw/index.htm**>>.

[131] SC Res. 949 (Oct. 15, 1994), __ I.L.M. ___ (1994); available online at: <**gopher://gopher.undp.org/00/undocs/scd/scouncil/s94/949**>.

[132] A detailed history of Operation DESERT STRIKE is available online at: <**http://www.fas.org/man/dod-101/ops/desert_strike.htm**>. President Clinton's 3 Sep 96 statement describing Operation DESERT STRIKE is online at: <<**http://www.fas.org/man/dod-101/ops/docs/wh_iraq_960903.htm**.>> *See also* a description of

Then in 1993, Operation DENY FLIGHT enforced a no-fly zone over the Balkans with US aircraft based at Aviano AB, Italy.[133] United Nations Security Council Resolution 781 provided the legal basis for air operations to enforce the ban on military flights over Bosnia-Herzegovina airspace.[134]

A typical no-fly zone contains several aircraft to provide a mix of mission capabilities with gaining and maintaining air superiority as the primary objective. A typical day's air tasking order (ATO) includes an AWACS, tankers, and fighters. The flowsheet positions aircraft according to their relative value, their mission, and their responsibilities. The E-3 airborne warning and control system (AWACS) jet sets up an orbit just outside or over the area of operations (AO). The air to air fighters sweep the AO and sanitize it before the airborne command element (ACE) allows the tankers to set up their orbits. Meanwhile the wild-weasels, often F-16CJ models remain available should a surface to air missile (SAM) ring or other radar site try to paint or "look" at the no-fly zone aircraft. Once these platforms are in position, the ACE is ready to let the remaining defensive counterair fighters into AO. These might include F-15C, F-15E and F-16C fighters. Aircraft fly their respective combat air patrols (CAPs) and orbits until they need gas or are replaced by follow-on assets.

4404th (Provisional) Wing, engaged in the DESERT STRIKE, online at <http://www.af.mil/current/dstrike/4404.htm>.

[133]John Pomfret, *First US Troops Arrive in Balkans,* WASHINGTON POST, 6 July 1993, A1, A11.

[134] UNSCR 781; *See also* Operation DENY FLIGHT and 16th Expeditionary Air Wing Aviano AB, Italy, Fact Sheets, online at << http://www.fas.org/irp/agency/usaf/usafe/16_af/16eaw >>.

Refueling, weather, and AWACS' communications/radar link requirements present the main limiting factors to the duration of the daily mission.

So how does the US military, in most cases the Air Force, accomplish the strategic objectives of a no-fly zone? One scholar maintains that the most effective no-fly zones, as measured by prevention of abuse, occur when air operations are conducted in concert with surface forces.[135] Two ingredients exist to make a strategically successful no-fly zone. First, the air component commander must understand the national security objective of the no-fly zone. Second, the commander must enforce the no-fly zone, peaceably or forcefully, within the limitations of policy and law.[136] Though it seems counter-intuitive, no-fly zone airmen prepare for a combat operation that may require no actual use of force.

It seems combat lessons-learned merged with the political lessons of peace operations to form much of the MOOTW doctrine now in existence. Joint Pub 3-07 collects these lessons-learned and applies them to all MOOTW. Unfortunately, no joint or service-specific doctrine covers no-fly zone operations. Perhaps a joint tactics, techniques, and procedures (JTTP) manual in the JP 3-07 series would capture the specific lessons learned from the Iraq and Bosnia no-fly zones then produce a doctrinal template for executing the no-fly zone mission.

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[135] Shanahan, *supra* note 11.

[136] The no-fly zone operation's rules of engagement (ROE) embody the political limitations, legal restraints, and military application of force. *See infra* Section V.

2. No-Fly Zones as Instruments of National Security Policy

Considering that both the 1997 NSS[137] and the 1997 NMS[138] use no-fly zone operations as examples of military force options available to secure US national interests, no-fly zones are likely to continue as an expeditionary operation of choice. One scholar suggests that air power, and implicitly no-fly zones, will be the best first option to secure our national interests.[139] "The no-fly zone is a particularly tempting option for both civilian and military leaders in this era of force reductions and rising aversion to American military casualties, because they are ostensibly low risk when compared to alternative methods of military intervention."[140] Like the 1997 NSS, the 1998 National Security Strategy specifically lists no-fly zones as a type of "smaller-scale contingency."[141] The 1998 NSS predicts that no-fly zones and other military operations other than war (MOOTW) "will likely pose the most

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[137] NSS *supra* note 17.

[138] NMS, *supra* note 15.

[139] Shanahan, *supra* note 11, at 18 ("(a)s the military's new kid on the block, the no-fly zone offers a seductive option.").

[140] *Id.* at 19. NMS, *supra* note 15, at 4.

[141] THE WHITE HOUSE, A NATIONAL SECURITY STRATEGY FOR A NEW CENTURY 21 (Oct. 1998)[hereinafter, 1998 NSS]. The 1998 NSS cites no-fly zones as a type of smaller-scale contingency operation short of major theater warfare.

frequent challenge for U.S. forces and cumulatively require significant commitments over time."[142]

As a means of implementing US security strategy, US armed forces prepare "to act alone when that is our most advantageous course."[143] When the US acts independently to use force, the legal justification comes under intense scrutiny. The international and operations lawyer should always consider policy, international law, and military doctrine when advising on both the basis and the propriety of a military course of action. Although the US may act alone, the UN or other international organizations to which the US belongs most often impose no-fly zones.[144]

The NSS recognizes that "many of our security objectives are best achieved—or can only be achieved—through our alliances and other formal security structures, or as a leader of an ad hoc coalition formed around a specific objective."[145] The international and operations law attorney must still articulate a basis for collective action. In coalition operations, a sound legal basis allows the US to build and maintain consensus. This consensus in turn lends credibility and legitimacy.

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[142] *Id.*

[143] 1998 NSS, *id.* at 2.

[144] *Id.*; Shanahan, *supra* note11; and, Major Michael V. McKelvey, *supra* note 117.

[145] 1998 NSS, *id.*

3. No-Fly Zones and Legitimacy

Legitimacy applies twice to military actions, to include no-fly zones. First, to establish a legitimate national purpose behind launching a no-fly zone. Second, to ensure the lawful conduct of the military units conducting the no-fly zone enforcement. As a MOOTW principle, legitimacy provides the glue that binds the purpose to the nature of the operation and the conduct used to attain the declared end-state. The next two sections of this paper discuss the lawfulness of the purpose of a no-fly zone and the lawful manner of conduct during aerial enforcement of a no-fly zone. Without legitimacy, a nation's resort to force becomes unjustified aggression. Such unreasoned aggression requires no rule of law or rightness, only might.

III. What Justifies Peacetime Enforcement of a No-Fly Zone—Legitimacy of Purpose

No fly-zone operations place armed forces into a sovereign state to deny that state use of its own territorial airspace. American military doctrine explains no-fly zone operations on the basis of either deterrence of aggression or humanitarian intervention. What legal authority buttresses this intervention? The answer requires analysis of just war doctrine in

light of the United Nations Charter[146] and the traditional law of armed conflict concepts justifying recourse to war (*jus ad bellum*).[147]

A. Just War Theory and Morality

"Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God." [148]

—Francis Lieber, 1863

Many scholars observe that morals and law are not necessarily the same.[149] Sprung from one source, the waters of law and morality flow often together, often apart, and although ultimately in the same direction, not always over the same terrain. Just war theory generally judges war to be just or not on the following criteria: "If the war is declared by legitimate authority (those entrusted with the governance of the nation-state), is embarked upon for a just cause, is waged with the right intention, and employs just means, then that war may be

[146] CHARTER OF THE UNITED NATIONS, 59 Stat. 1031, T.S. 993, 3 Bevans 1153 (signed at San Francisco on 26 June, 1945; entered into force on October 24, 1945) [hereinafter, The Charter or UN Charter].

[147] *See* W. Hays Parks, *Air War and the Law of War*, 32 A.F. L. REV. 1, at 4 ("*Jus ad bellum* is a Latin term meaning 'up to the commencement of war.' Basically, the proper circumstances to resort to force or war." *Id.* at note 14); MORRIS GREENSPAN, THE MODERN LAW OF LAND WARFARE 41 (1959) (describing the concept as "the doctrine of *bellum justum*, just war," quoting Kelsen. *Id.* at note 25). *See also* MICHAEL WALZER, JUST AND UNJUST WARS (1977); YEHUDA MELZER, CONCEPTS OF JUST WAR (1975); RICHARD A. FALK, LAW, MORALITY, AND WAR IN THE CONTEMPORARY WORLD (1963). I basically interpret *jus ad bellum* to mean: the right reasons to resort to war; just recourse to war; the combined moral and legal justifications for going to war; or simply, the reason a nation fights a war or places her armed forces into potential combat.

[148] Francis Lieber, quoted by Telford Taylor, *War Crimes, in* WAR, MORALITY, AND THE MILITARY PROFESSION 378 (Malham M. Wakin ed., 1986)[hereinafter, WAR, MORALITY, AND THE MILITARY].

[149] *See* Parks, *supra* note 147, at 4.

morally justified."[150] In turn, the "just cause" element espoused three of its own conditions to meet either singly or collectively to make the cause just: "defense against attack, punishment of evil, or the recovery of something wrongly taken."[151]

Wars should ultimately be fought for one just cause—"to provide a better peace."[152] The ultimate object of the law of armed conflict is a moral object—humanity.[153] A nation should send its soldiers, airmen, sailors and marines into combat for only the best of reasons. While combat ensues, human suffering should be minimized. When war subsides, an army should return to the nation the survivors as moral citizen soldiers. In the end, this explains why there even is a law of armed conflict. As General Telford Taylor most aptly put it:

> *There are at least two reasons—or perhaps one basic reason with two formulations for the preservation and continued enforcement, as even-handedly as possible, of the laws of war. The first is strictly pragmatic: They work. Violated or ignored as they often are, enough of the rules work enough of the time so that mankind is very much better off with them than without them.*

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[150] WAR, MORALITY, AND THE MILITARY, *supra* note 148, at 220. *See*, Major Michael N. Schmitt, *The Confluence of Law and Morality: Thoughts on Just War,* 3 USAFA J. LGL. STUDIES 91-106 (1992)(Schmitt provides a full explanation of Just War theory as developed by the Catholic Bishops. He states, "there are nine just war requirements, seven relating to the issue of resort to force, *jus ad bellum*, the final two to the methods of employing it, *jus in bello*. Each not only reflects the evolution of the doctrine, but is also evident to varying degrees in the modern law of armed conflict." *Id.* at 94. The nine just war requirements are: (1) just cause; (2) competent authority; (3) comparative justice; (4) right intention; (5) last resort; (6) probability of success; (7) *jus ad bellum* proportionality (of the resort to war—balancing the harm caused by war against the values sought to be protected); (8) *jus in bello* proportionality (in the waging of war—balancing the battle method or means against the military advantage gained; and (9) discrimination (distinguishing between valid military targets and those immune from combat: civilian non-combatants, those *hors de combat*, such as prisoners of war, or the wounded and shipwrecked at sea).

[151] George Weigel, *Low Intensity Conflict in the Post-Cold War World: The American Moral-Cultural Environment, in* HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 257 (Richard B. Lillich ed. 1973).

[152] WAR, MORALITY, AND THE MILITARY, *supra* note 148, at 220.

[153] *See* A. P. V. ROGERS, LAW ON THE BATTLEFIELD 3-7 (1996).

...

Another and, to my mind even more important basis of the laws of war is that they are necessary to diminish the corrosive effect of mortal combat on the participants.[154]

American society demands just conduct in war fought for just reasons. While the conduct is discussed elsewhere, this paper now turns to the just causes of no-fly-zones.

B. Two Just Causes: Self-Defense Against Aggression and Protection of Human Rights

Secretary of State Daniel Webster defined a renowned self-defense standard in *The Caroline* incident.[155] He said, there must be "a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation."[156] Besides the customary inherent right of self-defense, the law of armed conflict also developed other rationales for use of force, some better accepted than others.[157] Two significant justifications in international law are humanitarian intervention and self-defense. This paper's narrow

[154] Taylor, *in* WAR, MORALITY, AND THE MILITARY *supra* note 148, at 377-78.

[155] Jennings, *The Caroline and McLeod Cases*, 32 AM. J. INT'L. L. 82 (1938).

[156] Letter to British Envoy Fox, April 24, 1841, 29 BRIT. & FOREIGN ST. PAPERS, 1840-1841, at 1129, 1138 (1857)(Secretary Webster's letter goes on to require the British to show that even assuming necessity, that they "did nothing unreasonable or excessive, since the act, justified by the necessity of self-defense, must be limited by that necessity and kept clearly within it." *Id.*)

[157] *See* Lt Col Richard J. Erickson, *Use of Armed Force Abroad: An International Law Checklist*, VOL. 15 NO. 2 THE REPORTER 3-8 (AF JAG School ed.,1989)(Erickson provides thirteen legal justifications for use of force and rates their acceptability in the world community and the conditions required to satisfy each basis for use of force. The justifications given are: (1) national self-defense; (2) anticipatory self-defense; (3) collective self-defense; (4) collective anticipatory self-defense; (5) regional arrangement enforcement action; (6) regional peacekeeping; (7) invitation; (8) peacetime reprisal; (9) protection of state's nationals; (10) humanitarian intervention; (11) hot pursuit; (12) suppression of piracy; and (13) self-help. *Id.*).

focus examines both the traditional law of armed conflict and the UN Charter on these two rationales for use of force.

1. Humanitarian Intervention and the UN Charter—Sovereignty vs. Human Rights

Perhaps the cornerstone of international relations is the inviolability of the sovereign state.[158] It is an aspect of sovereignty that the sovereign may treat its people in any fashion.[159] Yet, nations frequently and historically intervene in other nations for humanitarian purposes.[160] When does international law pierce the sacrosanct veil of sovereignty to allow another state to intercede on behalf of a persecuted population?

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[158]"Traditionally, states have been free under international law to treat their nationals as they wish." R. SWIFT, INTERNATIONAL LAW: CURRENT AND CLASSIC 324 (1969).

[159] An American federal court viewed this principle as follows:

> International law, as its name suggests, deals with the relations between sovereign states, not between states and individuals. Nations not individuals have been its traditional subjects. ... As long as a nation injures only its own nationals, however, then no other state's interest is involved; the injury is a domestic affair, to be resolved within the confines of the nation itself.
>
> Recently, this traditional dichotomy between injuries to states and to individuals –and between injuries to home-grown (sic) and to alien individuals—has begun to erode. The international human rights movement is premised on the belief that international law sets a minimum standard not only for the treatment of aliens but also for the treatment of human beings generally.

De Sanchez v. Banco Central de Nicaragua, 770 F.2d 1385, 1396-97 (5th Cir. 1985)[hereinafter, *De Sanchez* opinion] (citations omitted).

[160] According to Professor Greenspan:

> "There have been numerous cases during the nineteenth and twentieth centuries where the shocking treatment by a state of its own subjects moved other states to intervene on 'grounds of humanity,' as for instance, in the massacre of Christians in Armenia and Crete under the Ottoman empire, in 1891-1896, and further massacre of the Armenians in 1915, and the persecution and massacre of the Jews under tsarist Russia, 1882 and 1903."

Before the Charter, humanitarian intervention was largely accepted as practice among states.[161] Citing Vattel, Grotius, Oppenheim, Lauterpacht, Guggenheim and others, one noted scholar emphasizes the historically broad construction of human rights law as "indicators of the expectations and demands of the peoples of the world in regard to the minimum conditions of humanity."[162] A summary of the pre-Charter customary international law view follows:

> Some rights are not rights created by States for the benefit of their nationals or of foreigners; namely the right to life, the right to liberty.... Before these rights, nationality sinks into the background, because they belong to the man as human being, and are not, accordingly, subordinate to the will of the State. ... When a state abuses its right of sovereignty by permitting within its territory the treatment of its own nationals or foreigners in a manner violative of all universal standards of humanity, any nation may step in and exercise the right of humanitarian intervention.[163]

International law scholars fall into two main camps on the lawfulness of humanitarian intervention after the UN Charter entered into force.[164] One camp, represented by Professor

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GREENSPAN, *supra* note 147, at 438 (citations omitted).

[161] W. Michael Reisman, *Humanitarian Intervention to Protect the Ibos, reprinted in* HUMANITARIAN INTERVENTION AND THE UNITED NATIONS at 168-171. (Richard B. Lillich ed. 1973).

[162] *Id.* at 170.

[163] Report of the Sub-committee of the League of nations Committee of Experts for the Progressive Codification of International Law on *Responsibility of States for Damage Done in Their Territories to the Person or Property of Foreigners,* 20 AM. J. INT'L. L., Special Supp. 177, 182 (1926), *cited in* A. THOMAS & A. THOMAS, THE DOMINICAN REPUBLIC CRISIS 1965 (J. Carey ed. Hammarskjold Forum 1967), *quoted in* Reisman, *Id.* at 168 note 2, 170 note 17.

[164] *See* Jean-Pierre L. Fonteyne, *Forcible Self-Help by States to Protect Human Rights: recent Views from the United Nations, in* HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 197-221(Richard B. Lillich ed. 1973)(providing a balanced overview of many leading positions for and against humanitarian intervention).

W. Michael Reisman and the New Haven school,[165] maintains the legality of unilateral or collective humanitarian intervention, whether sanctioned by the UN Security Council or not.[166] This view interprets Article 2(4) to allow use of force that is *not* "inconsistent with the Purposes of the United Nations."[167] These purposes are reflected in the preamble of the Charter:

> "*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person..., *AND FOR THESE ENDS*... to unite our strength to maintain international peace and security, and to ensure... that armed force shall not be used, save in the common interest...."[168]

The other camp, UN Charter strict constructionists, as represented by Professor Ian Brownlie, oppose any humanitarian intervention, unless through an appropriate organ of the United Nations or by peaceful invitation.[169] These strict constructionists view humanitarian intervention as both a violation of the Charter[170] and as "wide open to abuse"[171] by "vigilantes and opportunists to resort to hegemonial intervention."[172]

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[165] *See* Schmitt, *supra* note 150, at 91-106 (explaining that the New Haven school of international law is 'policy-oriented.' "Its proponents view international law as 'an ongoing process of decision through which the members of the world community identify, clarify, and secure their common interests." *Id.* at 92).

[166] Reisman, *supra* note 161, at 167-195.

[167] U.N. CHARTER, *supra* note 146, at art. 2, para. 4.

[168] *Id.*, at preamble, para. 1 and para. 2.

[169] Ian Brownlie, *Thoughts on Kind-Hearted Gunmen, reprinted in* HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 139-148 (Richard B. Lillich ed. 1973). "Hegemony. The influence of one state over others." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 572 (1988).

[170] *Id.* at 142-143. *See also* Louis Henkin, *Use of Force: Law and U.S. Policy, in* RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 37 (1959) (arguing "Extravagant claims of right to act in self-defense have been the principle threat to the law of the Charter."); *but see* John Norton Moore, *Low Intensity Conflict and the International Legal System, in* LEGAL AND MORAL CONSTRAINTS ON LOW-INTENSITY

Many, such as Brownlie, maintain that the sole basis for use of force (jus ad bellum) in modern times is use of force under the UN Charter.[173] This ignores the reality of post-Charter history. The UN Charter's scheme to outlaw aggression remains an aspirational regime so long as the Security Council fails to take non-vetoed or consensus action.[174] In the Charter's vacuum between defined actions of self-defense and aggression, lies the basis for most conflict since the Charter's inception. States justify their actions based on self-defense while protesting States maintain the action failed to meet the criteria justifying self-defense.[175] Such argument and counter-argument characterizes the cold-war era of the Security Council's history and explains the comparative inaction.

Both camps seem to agree on one aspect of humanitarian intervention: UN Security Council sanctioned force to maintain international peace and security when violation of

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CONFLICT 25 (67 U.S. Naval War College International Law Studies, Alberto R. Coll et al. eds., 1995) (also quoting Henkin and challenging him directly: "These 'principal threats' to the Charter did not result from an expansion of the right of defense but rather because of a willingness by aggressive totalitarian regimes to commit aggression and a system perceived by them as unlikely to provide effective defense." *Id.* at 31).

[171] Brownlie, *supra* note 169, at 146.

[172] *Id.* at 148.

[173] *See* Henkin, *supra* note 170; A. THOMAS & A. THOMAS, *supra* note 148; IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963).

[174] Major Michael Schmitt, *The Resort to force in International Law: Reflections on Positivist and Contextual Approaches*, 37 A.F. L. REV. 105, at 110-112 (stating Article 2(4) and the ensuing "positivist system envisioned in the Unite (sic) Nations Charter was for all practical purposes stillborn." *Id.* at 110). *See also* Robert F. Turner, *State Sovereignty, International Law, and the Use of Force in Countering Low-Intensity Aggression in the Modern World, in* LEGAL AND MORAL CONSTRAINTS ON LOW-INTENSITY CONFLICT 81 (67 U.S. Naval War College International Law Studies, Alberto R. Coll et al. eds., 1995) (Professor Turner comments: "The 1990-91 Gulf crisis provided hope that the essentially stillborn U.N. Security Council might be rejuvenated and permitted to play a central role in peacekeeping." *Id.*).

human rights threaten that peace and security. Consensus-based action, sanctioned by the Security Council may lawfully and unquestionably be taken to restore fundamental human rights. Where consensus is lacking, nations must resort to the cold-war era practice of justifying intervention on customary international law and treaty obligations outside the Charter.[176]

Human rights law lists many specific rights founded in both customary and treaty law. Conventional law sources include the UN Charter,[177] the Universal Declaration on Human Rights,[178] and The Convention on the Prevention and Punishment of the Crime of Genocide.[179] However, not all human rights are peremptory norms (*jus cogens*). So which human rights trigger coercive intervention when violated? International law and US domestic law provide answers. The Universal Declaration on Human Rights prohibits racial, sexual, or religious discrimination,[180] slavery,[181] torture or cruel, inhumane punishments,[182]

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[175] Oscar Schachter, *Self-Defense and the Rule of Law*, 83 AM. J. INT'L. L. 259-277 (1989).

[176] *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES [hereinafter, RESTATEMENT (THIRD)] Sec. 703 and accompanying commentary and reporter's notes (1986).

[177] *Supra* note 131.

[178] Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217, U.N. Doc. A/180 at 71 (1948)[hereinafter, Declaration of Human Rights].

[179] Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 Dec. 1948, G.A. Res. 2670, U.N. Doc1/777 (1948)[hereinafter, Genocide Convention].

[180]Declaration of Human Rights, *supra* note 178, at art. 2

[181] *Id.*, at art. 4.

[182] *Id.*, at art. 5.

and arbitrary arrest or detention.[183] Meanwhile, the Genocide Convention prohibits five specific acts taken to destroy a religious, racial, ethnic, or national group:

> (a) killing members of the group;
> (b) causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions on life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group[184]

The Genocide Convention seems particularly relevant to the allegations of ethnic cleansing that arose in the Balkans.

Domestically, one American court suggests a short list of fundamental human rights as follows:

> the standards of human rights that have been generally accepted –and hence incorporated into the law of nations—are still limited. They encompass only such basic rights as the right not to be murdered, tortured or otherwise subjected to cruel, inhuman or degrading punishment; the right not to be a slave; and the right not to be arbitrarily detained.[185]

Combining domestic US law and international law one develops a sense of certain broad categories of rights are fundamental as preemptory norms. This paper argues that the

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[183] *Id.*, at art. 9.

[184] Genocide Convention, supra note 179 at art. 2.

[185] *De Sanchez* opinion, *supra* note 140, at 1397.

following six rights or protections are *jus cogens*:[186]

(1) Protection from torture or cruel, inhuman or degrading punishment;

(2) Protection from Slavery

(3) Protection from arbitrary detention.

(4) Protection from genocide,

(5) Protection from widespread systematic gross discrimination or gross abuse of a racial, religious, sexual, ethnic, or national nature.[187]

Violation of any of those or a consistent pattern of gross violations of internationally recognized human rights justifies humanitarian intervention.[188]

2. Security Council Coercion or Self-Defense—Use of Force and the UN Charter

The UN Charter's two main precepts related to use of force are: first, the concept of pacific settlement of disputes, which bans aggression; and second, the idea of coercive maintenance of peace and security. Article 2(3) mandates pacific settlement of disputes: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."[189] Article 2(4) outlaws aggression: "All Members shall refrain in their international relations from the threat or use

[186] RESTATEMENT (THIRD) *supra* note 161, at Sec. 702, and comments *m* and *n*.

[187] *Id.*, at RESTATEMENT (THIRD) *supra* note 161, at Sec. 702, comments and reporter's notes thereafter.

[188] RESTATEMENT (THIRD) *supra* note 161, at Sec. 703 comment *e*, and Sec. 905.

[189] U.N. CHARTER, *Supra* note 146, at art. 2, para 3.

of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[190]

The second precept, coercive or forceful maintenance of peace and security, exists as an exception to the first precept, peaceful settlement of disputes. The Charter allows either UN Security Council to sanction force,[191] or self-defense on an individual or collective basis.[192]

The Charter implements these concepts for maintenance of international peace and security through Security Council action or, in the alternative, through independent action in self-defense. First, the Charter prefers Security Council action to restore peace or to maintain security. Security Council powers to respond to aggression reside in Articles 24-26 and Chapters VI, VII, VIII and XII. The Security Council's right to a coercive response to aggression and other threats to international peace and security exists in Article 42 of Chapter VII. The Security Council may authorize "action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."[193]

Should the Security Council not respond to aggression, by failure or inaction, then regional arrangements or agencies are encouraged to take action. Article 51 provides:

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[190] *Id.*, at art. 2, para 4.

[191] *Id.*, at art. 42.

[192] *Id.*, at art. 51.

[193] *Id.*, at art. 42.

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."[194] Additionally, Articles 52 through 54 provide for regional arrangements to maintain peace and security. Finally, self-help by individual states may occur to defend against aggression. The UN Charter does not abrogate the inherent right of self-defense.[195] Individual or collective self-defense may continue until the Security Council acts.

C. Lawful Conduct of Contemporary Military Operations

Ultimately, the US engages in modern military operations, to include no-fly zones, under one of the following three justifications: one, when sanctioned by the UN Security Council;[196] two, when founded on customary humanitarian intervention law;[197] or three, in exercise of inherent individual or collective self-defense to deter aggression.[198] The just recourse to

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[194] *Id.*, at art. 51.

[195] *See generally* Schachter, *supra* note 175 (Professor Schachter explores "aspects of the problem raised by ... challenges to the applicability of international law to claims of self-defense." *Id.* at 259).

[196] RESTATEMENT (THIRD) *supra* note 176, at Sec. 703, comment *e*:

> It is increasingly accepted that a state may take steps to rescue victims or potential victims in an action strictly limited to that purpose and not likely to involve disproportionate destruction of life or property in the state where the rescue takes place. ... Such intervention might be acceptable if taken pursuant to resolution of a United Nations body....

[197] *Id.* at Sec. 702 and comments thereto.

[198] *See* Moore, *supra* note 170 (Professor Moore maintains "I believe that, in reality, when faced with an ongoing pattern of aggressive attack, it is certainly within the right of individual and collective defense to take necessary and proportional actions to effectively end the attack.... This right of defense *is* classic international law, not the fashionable contemporary inversion of this principle." *Id.* at 36).

humanitarian intervention provides legitimacy to military intervention.[199] For US operations other than war, "legitimacy is a condition based on the perception by a specific audience of the legality, morality, or rightness of a set of actions. This audience may be the US public, foreign nations, the populations in the area of responsibility..., or the participating forces."[200]

Scholars assert various criteria to justify humanitarian intervention operations on both moral[201] and legal[202] grounds. Common to these views are: the requirements of a breach of a

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[199] American military doctrine considers legitimacy as a principle of military operations other than war. *Supra* note 31 and accompanying text.

[200] JOINT PUB 3-07, *supra* note 9, at II-5. The manual also notes that US public perceptions of legitimacy are "strengthened if there are obvious national or humanitarian interests at stake, and if there is assurance that American lives are not being needlessly or carelessly risked." *Id.*

[201] *See* Fernando R. Teson, *Low-Intensity Conflict and State Sovereignty: A Philosophical Analysis*, *in* LEGAL AND MORAL CONSTRAINTS ON LOW-INTENSITY CONFLICT 87 (67 U.S. Naval War College International Law Studies, Alberto R. Coll et al. eds., 1995). Teson maintains that coercive operations other than war are morally justified on six conditions:

> 1) The ends of the operation are morally justified goals under just war theory. A war has a just aim when it is waged in the defense of persons and, derivatively, of just institutions
>
> 2) The government contemplating the operation is a legitimate government.
>
> 3) Either the target State or the target government are illegitimate.
>
> 4) The operation does not otherwise violate human rights.
>
> 5) The operation is necessary and proportionate.
>
> 6) The *modus operandi* is not such that would undermine the flourishing of civic and personal virtues that a liberal democracy must encourage.

Id. at 89.

[202] *See* Turner, note 174 at 79-80. Professor Turner would permit military force or the threat of such force to be used under the following five guidelines:

> (1) There must be a breach of State responsibility on the part of the State against whose territory the use of force is being contemplated, ...*and,*

(2) Peaceful means of resolving the dispute must have been exhausted (or it must be clear that they would not succeed); *and,*

(3) The level of force used must be limited to that necessary to bring an end to the unlawful threat to the State; *and,*

(4) Reasonable efforts must be taken to avoid any unnecessary interference in the internal affairs of other States; *and,*

(5) Consistent with (4), all intervention in the second State must be brought to an end at the earliest possible date.

Id. at 79-80;

Michael Reisman and Myres S. McDougal suggested four-criteria in 1968 (summarizing Professor Nanda while leaving out Nanda's fifth element—consent of the intervened nation):

> The post-U.N. practice of humanitarian intervention affirms the continuing validity of the institution and the conditions under which it will be deemed lawful. Given a threat to minimum human rights, these conditions as summarized by Professor Nanda, are
>
> 1. A specific purpose,
>
> 2. Limited duration of the mission,
>
> 3. Limited use of coercive measures,
>
> 4. Lack of any other recourse.

Supra note161, at 187.

Richard B. Lillich reports in 1979 that Tom Farer summarized John Norton Moore's syntehesis of the Nanda-Lillich criteria for judging the legality of humanitarian intervention into seven criteria:

> 1. That there be an immediate and extensive threat to fundamental human rights.
>
> 2. That all other remedies for the protection of those rights have been exhausted to the extent possible within the time constraints posed by the threat.
>
> 3. That an attempt has been made to secure the approval of appropriate authorities in the target state.
>
> 4. That there is a minimal effect on the extant structure of authority (e.g., that the intervention not be used to impose or preserve a preferred regime).
>
> 5. That the minimal requisite force be employed and/or that the intervention is not likely to cause greater injury to innocent persons and their property than would result if the threatened violation actually occurred.
>
> 6. That the intervention be of limited duration
>
> 7. That a report of the intervention be filed immediately with the Security Council and,

'fundamental' human right; a necessity brought on by failure to peacefully resolve the breach; and a proportionate response, ending as soon as the breach and its threat to international peace and security is resolved. American military action taken in Somalia, Iraq, Haiti, the Balkans, and Rwanda were based, to some greater or lesser degree, on humanitarian principles. We now have a history of humanitarian intervention along with a history of military peace making, peace keeping, and peace enforcement operations. In the past decade, a no-fly zone has been the response of choice for a humanitarian operation where the target state opposes the intervention and conflict remains a possibility.

IV. What Regulates Use of Force in No-Fly Zones—Legitimacy of Conduct

The NCA deploy US Armed Forces to accomplish national policy goals along the spectrum of military operations.[203] American leaders and the nation expects these missions to be completed in a lawful manner. What laws apply to conduct during combat or the *jus in*

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where relevant, regional organizations.

Richard B. Lillich, *A United States Policy of Humanitarian Intervention and Intercession, in* HUMAN RIGHTS AND AMERICAN FOREIGN POLICY, 278, 287-290 (1979), *reprinted in* INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS, 243, 244-245 (Frank Newman and David Weissbrodt eds., 2nd Edition, 1996).

See also John M. Collins, *Military Intervention: A Checklist of Key Considerations*, VOL. XXV, NO. 4 PARAMETERS 53 (Winter 1995-96)(Mr. Collins presents eight separate checklists for American leadership to check their premises for entering into expeditionary operations).

[203] The US government's primary policy goals are outlined in the NSS, *supra* note 17 and the NMS, *supra* note 15. Specifically, DOD protects our nation's vital, important, and humanitarian interests. 1997 NMS, *Id.* at 6.

bello[204] aspect of conflict? Do these same laws apply to peacetime expeditionary operations, such as no-fly zones? The answers to these questions result from a synthesis of domestic policy, international law, and operational context applied to the concept of *jus in bello*.

A. Definition of Jus in Bello—Whether described as the law of war, the law of armed conflict, or even international humanitarian law, this traditional body of international law "refers to principles and rules regulating the conduct of armed hostilities between states."[205] The *jus in bello* prong of the law of armed conflict regulates the manner, methods, and means by which wars are fought.

When does *jus in bello* apply? No formal declaration of war is necessary for the law of armed conflict to apply. If an international armed conflict exists, this regime of international law applies.[206] The law of armed conflict "may also apply to armed conflicts that have not been viewed as 'international' but which clearly involve the peace and security of the

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[204] The legal rights and obligations of combatants during war. These laws of armed conflict regulate the manner, methods, and means of combat. *See* Parks, *supra* note 147, at 4. *See also supra* note 147 and 150 (discussing *jus ad bellum* and just war theory and defining *jus in bello* under just war theory).

[205] AF PAMPHLET 110-31: INTERNATIONAL LAW—THE CONDUCT OF ARMED CONFLICT AND AIR OPERATIONS (AF/JACI ed., 19 November 1976)[hereinafter, AF Pam. 110-31](AF/JACI is now AF/JAI, the Air Staff's office of International and Operations Law, under the Air Force Department of Judge Advocate General) [hereinafter, AFP 110-31]. *See supra* note 8 (for explanation of this author's preference for the term LOAC).

[206] The US position on declared war is: "The legal rules of international law concerning the conduct of armed conflicts apply to all armed conflicts without regard to the presence or absence of declarations of war. The 1949 Geneva Conventions for the Protection of War Victims were specifically made applicable to 'any armed conflict of an international character' between two or more of the parties. The rules of war embodied in the Hague Conventions formulated in the early years of this century are considered, in general, to be part of customary international law binding on all states, and their applicability is unrelated to declarations of war." 5 I.L.M. 792 (1966), *reprinted in* AFP 110-31, *id.*, at 13-6, note 2.

international community."[207] The trend is to expand the scope of the law of armed conflict. Although regulated differently now, this trend would equally apply rules of conduct to both civil wars and international wars.[208] Recently, the International Criminal Tribunal for the Former Yugoslavia[209] "concluded that some customary rules had developed to the point where they govern internal conflicts, ...as well as prohibition of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities."[210]

Although the *jus in bello* differences between civil wars and international wars may diminish, what about non-wars? What regulates combatant conduct in operations other than war? DOD policy provides part of the answer.

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[207] *Supra* note 199.

[208] *See* Theodor Meron, Editorial Comment: *The Continuing Role of Custom in the Formation Of International Humanitarian Law*, 90 AM. J. INT'L. L. 238 (1996)("The Tribunal here reflects the constructive evolution towards the blurring of the dichotomy between international and internal armed conflicts. .... (G)eneral principles first developed for international wars, such as proportionality and necessity, may be extended through customary law to civil wars." *Id.* at 243-244).

[209] Properly known as International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [hereinafter, The Tribunal]. The Tribunal was formed by Security Council Resolution on Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Humanitarian Law Committed in the Territory of the Former Yugoslavia, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. S/RES/827 (1993), *reprinted in* 32 I.L.M. 1203 (hereinafter S.C. Res. 827). The Security Council, under its authority in Articles 39 and 41 of the Charter decided the situation in the Former Yugoslavia posed a serious threat to international peace and security. The Security Council directed and the Secretary-General completed an investigation on that threat. Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. SCOR, 48th Sess., U.N. Doc. S/25704 (1993), *reprinted in* 32 I.L.M. 1159 (hereinafter Secretary-General's Report). The Statute of the Tribunal is an annex to the Secretary-General's Report, *supra*, it is *reprinted in* 32 I.L.M. 1192 (hereinafter, Statute). The Security Council both approved the Secretary-General's Report and created the Tribunal by passing S.C. Res. 827.

[210] Meron, *supra* note 208, at 240.

B. The US Policy Answer: Apply the Law of Armed Conflict by Analogy

The DOD Law of War Program,[211] requires US forces to "comply with the law of war in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized." In turn, a Chairman, Joint Chiefs of Staff Instruction, *Implementation of the DOD Law of War Program*,[212] obligates US forces to obey the law of armed conflict during combat and the principles of the law of armed conflict during operations other than war, including therefore, no-fly-zone operations. The *Implementation Instruction*, paragraph 4a provides,

> [t]he Armed Forces of the United States will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized, and unless directed by competent authorities, will apply law of war principles during operations that are characterized as Military Operations Other Than War.[213]

What are the legal sources for the analogy? What is the methodology? How does the soldier, the commander, or the operational lawyer find the law to apply by analogy? In general, there are primary and secondary sources of international law. The details are outlined in the next two subsections.

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[211] DOD Directive 5100.77, DOD Law of War Program, 9 Dec 98 [hereinafter DOD Dir. 5100.77 or *DOD Law of War Directive*].

[212] CJCSI 5810.01, Implementation of the DOD Law of War Program, 12 Aug 96 [hereinafter, CJCSI 5810.01 or *Implementation Instruction.*].

[213] *Id.*

1. Primary Sources—International law of armed conflict may be found in primary sources, to include treaties,[214] customary international law, [215] and court opinions and scholarly works thereon[216] as primary sources. A brief list of relevant treaties to consider when researching the law of aerial armed conflict includes:

a. St. Petersburg Declaration of 1868[217]

b. Hague Balloon Declarations[218]

c. Hague Convention IV, and Annex Thereto (Hague Regulations).[219]

d. Hague IX Bombardment by Naval Forces[220]

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[214] *See generally Humanitarian Law Conference*, 2 AM. U. J. INT'L. L. & POL'Y. 415-538 (1987)[hereinafter Humanitarian Conference](discussing fundamental principles of the international law of armed conflict as reflected in the Protocols Additional to the 1949 Geneva Conventions); Rogers, *supra* note 138, at 1-24.

[215]"(S)ome treaty rules have gradually become part of customary law. This ... applies to Article 19 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and ... to the core of Additional Protocol II of 1977." The Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72, October 2, 1995, ITFY, at 54, para. 98, reprinted at 35 ILM 32 (1996) [hereinafter, *Tadic*].

[216] *See* The Statute of the International Court of Justice, 59 Stat. 1055, T.S. 993, 3 Bevans 1179 (1945) [hereinafter ICJ Statute], ICJ Statute Article 38, para. 1 (listing sources of international law applied by the ICJ as "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; (and)..., judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law"). *See also* HENKIN, PUGH, SCHACHTER & SMIT, INTERNATIONAL LAW CASES AND MATERIALS, Chapter 2, *Sources and Evidence of International Law*, 36-91 (St. Paul, MN, West Pub. Co. 1980) (this casebook provides analysis on custom, treaties, general principles of law, judicial decisions, teachings of the most highly qualified publicists, and international organizations as primary sources of international law).

[217] The St. Petersburg Declaration. 18 Martens III 474, 1 AM. J. INT'L. L. SUPP. 23 (1907); Annex I, ICRC, *Report of the ICRC, Reaffirmation and Development of the Laws and Customs Applicable to Armed Conflicts* (Geneva, 1969). This declaration introduced a notion of humanity in its preamble.

[218] Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 Oct 1907, article 1, 36 Stat. 2277, Treaty Series No. 539, Malloy, Treaties, Vol. II, p. 2269; reprinted at DA Pam 27-1, p. 6 [hereinafter Hague Convention IV].

e. Draft Hague Rules of Air Warfare, 1923[221]

f. 1949 Geneva Conventions.[222]

g. 1977 Protocols Additional to the Geneva Conventions[223]

Besides the treaty law, customary international law may provide guidance. Customary law of armed conflict includes those peremptory norms (*jus cogens*) that apply without challenge.[224] Treaties may well serve as evidence of custom; however, they are not the only source of customary international law. The practice of States may also evidence custom. Practice becomes binding custom when states follow the practice out of a sense of legal obligation (*opinio juris*) that the state must comply with the practice at all times. This *opinio juris* may be evident by implicit acts or omissions as well as express official statements.[225]

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[219]Declaration Prohibiting Launching of Projectiles and Explosives from Balloons, signed at The Hague on July 29, 1899, 32 Stat. 1839, TS 393 (entered into force Sept. 4, 1900, expired Sept. 4, 1905 [hereinafter, Hague Balloon Declarations].

[220] Hague Convention Concerning Bombardment By Naval Forces In Time Of War (Hague IX) entered into force for US on Jan. 26, 1910.

[221] Draft Hague Rules of Air Warfare, 1923, *reprinted in* GREENSPAN, *supra* note 145, at 650.

[222] Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 Aug 1949, art. 1, 6 U.S.T. 3114, 3116, 75 U.N.T.S. 31, 32 [hereinafter Geneva Convention I]; Convention for the Amelioration of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, 12 Aug 1949, art. 1, 6 U.S.T. 3217, 3220, 75 U.N.T.S. 85, 86[hereinafter Geneva Convention II]; Convention Relative to the Treatment of Prisoners of War, 12 Aug 1949, art. 1, 6 U.S.T. 3316, 3318, 75 U.N.T.S. 135, 136 [hereinafter Geneva Convention III]; Convention Relative to the Protection of Civilian Persons in Time of War, 12 Aug 1949, art. 1, 6 U.S.T. 3516, 3518, 75 U.N.T.S. 287, 288 [hereinafter Geneva Convention IV].

[223] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 December 1977, U.N. Doc. A/32/144, Annex 16 I.L.M. 1391, 1125 U.N.T.S. 3, reprinted at DA Pam 27-1-1, pp. 4-87 [hereinafter, Protocol I].

[224] L. OPPENHEIM, INTERNATIONAL LAW, VOL. II, DISPUTES, WAR, AND NEUTRALITY 520 (7th ed., H. Lauterpacht, ed., 1952).

2. Secondary Sources—Military manuals, regulations, and policy statements[226] serve as secondary sources. These manuals and implementing service regulations also reflect the DOD policy, to "apply law of war principles during operations other than war."[227] A review of US military manuals reveals we incorporate rules from the law of armed conflict, as found in FM 27-10, *The Law of Land Warfare*,[228] and AFP 110-31, *International Law--The Conduct of Armed Conflict and Air Operations*,[229] to operations other than war.[230] As an example, the US specifically observes the duties to protect and respect civilians and civilian objects during war[231] and applies this principle into contingency operations, specifically peacekeeping (PK) and peace enforcement (PE) operations:

> Because of the special requirement in peace operations for legitimacy, care must be taken to scrupulously adhere to applicable rules of the law of war. Regardless of the nature of the operation (PK or PE) and the nature of the conflict, US forces will comply with the relevant portions of FM 27-10 and DA Pamphlet 27-1. In a traditional PK operation, many uses of force may be

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[225] RESTATEMENT THIRD, *supra* note 161, at Sec. 102 Comment c.

[226] *See Tadic supra* note [redacted] (discussing state practice and citing various State's soldier manuals as evidence of such common practice).

[227] *Supra,* note 191.

[228] FM 27-10, THE LAW OF LAND WARFARE, Department of the Army, July 1956.

[229] AFP 110-31, *supra* note 205.

[230] "Regardless of who has authorized the peace operation, international law and US domestic laws and policy apply fully. For example, the laws of war... and policy apply to US forces participating in the operation." FM 100-23, *supra* note 8, at p. 48,

[231] FM 100-5, *supra* note 25, at 2-3 (stating, "(e)xercising discipline in operations includes limiting collateral damage—the inadvertent or secondary damage occurring as a result of actions by friendly or enemy forces. FM 27-10 provides guidance on special categories of objects that international law and the Geneva and Hague Conventions protect."

addressed in the mandate or TOR (terms of reference). In a PE operation, the laws of war may fully apply.[232]

Neither the *DOD Law of War Directive* nor the *Implementation Instruction* cite any specific principles of the law of war for compliance. Instead, these regulations state policy, directing forces to comply with *principles* of the law of armed conflict in both war and operations other than war. This leaves it to the individual soldier, sailor, airman, or marine to figure out which law of armed conflict principles must be complied with. This paper reviewed sources, now the focus shifts to a more specific search for guidance from those sources.

C. Analogous Laws—The Fundamental Principles

What laws are analogous to military enforced no-fly zones? This paper seeks answers in two parts. First, it addresses the fundamental principles applicable to all military operations other than war. Then, this paper turns to maritime and aviation regimes to suggest a *lex specialis* [233] applicable to expeditionary no-fly zones.

As a minimum, one reasons that those principles that are fundamental concepts in the law of armed conflict must be respected during operations other than war. Based on a review of the primary and secondary sources of international law, three well-accepted fundamental

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[232] *Id.* at 48-49.

[233] Latin phrase meaning "specialized field of law."

principles of the law of armed conflict are the requirements of military necessity, distinction, and proportionality.[234]

1. Military Necessity—Targeting an object for a military advantage to be gained by its destruction. "Military necessity is an urgent need, admitting of no delay, for the taking by a commander of measures, which are indispensable for forcing as quickly as possible the complete surrender of the enemy by means of regulated violence, and which are not forbidden by the laws and customs of war."[235] One scholar defines military necessity by distinguishing it from the principle of proportionality. He describes military necessity as a "principle of utility" that forbids

> gratuitous or superfluous harm—harm that does not serve to bring about a military benefit. But to require that the harm bring a military benefit is not to require that the harm be proportional to that benefit. It is only to establish the much weaker principle that the harm must bring some military benefit.[236]

2. Distinction—Discriminating between combatant targets and non-combatant targets such as civilians, prisoners of war, and wounded personnel who are *hors de combat*.[237] The

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[234] *See* Rogers, *supra* note 153 (considering military necessity, distinction, and proportionality as fundamental concepts); W. Hays Parks, *The 1977 Protocols to the Geneva Conventions of 1949*, in Moore & Turner *supra* note 92, at 467-478(considering military necessity, unnecessary suffering, and proportionality as fundamental principles); Humanitarian Conference, *supra* note 193, at 419-431 (presenting the Deputy Legal Adviser, US State Department, view on fundamental concepts of the law of armed conflict and citing select Protocol I principles as evidence of customary law of armed conflict, including the principles of military necessity, distinction, and proportionality). *See also* AF Pam 110-31, *supra* note 184, at 5-1 to 5-14 (discussing the law of armed conflict as it affects aerial bombardment, including historical development and including the principles of distinction, military necessity, and proportionality).

[235] Major William G. Downey Jr., *The Law Of War And Military Necessity*, 47 AM. J. INT'L. L. 251, 254 (1956).

gist of distinction is to only engage valid military targets. Protocol I labels such attacks "indiscriminate" as a legal term of art.[238] "Indiscriminate" thus describes attacks "of a nature to strike military objectives and civilians or civilian objects without distinction."[239]

3. *Proportionality*—balances the harm inflicted to the military advantage to be gained. The principle of proportionality is found in Additional Protocol I.[240] Proportionality, as a law of war principle, applies twice to regulate conduct in combat. First, proportionality balances the expected incidental loss of civilian life, injury to civilians, and damage to civilian objects, against the concrete and direct military advantage anticipated by attacking.[241] Under this balancing test, *excessive* incidental losses are prohibited. In combat therefore, soldiers may not "cause collateral injury to noncombatants or damage to civilian objects which is disproportionate to the military advantage derived from an operation."[242] Second, proportionality applies to methods and means of warfare between opposing forces.[243] Notable examples include prohibitions on weapons that cause superfluous injury or

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[236] SHELDON COHEN, ARMS AND JUDGMENT: LAW, MORALITY, AND THE CONDUCT OF WAR IN THE TWENTIETH CENTURY 40 (19__).

[237] French phrase meaning those who are no longer fighting; literally, "out of combat."

[238]Protocol I, *supra* note 223, at art. 51.

[239] *Id.*, at art. 51(4).

[240] Protocol I *supra* note 223.

[241] *Id.* at para. 5(b).

[242] Lt Col William J. Fenrick, *The Rule Of Proportionality And Protocol I In Conventional Warfare,* 98 MIL. L. REV. 91, 94 (1982).

[243] *See generally*, Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT'L. L. 391 (1993).

unnecessary suffering,[244] prohibitions on denial of quarter,[245] and recognition that combatants' methods or means of warfare are not unlimited.[246]

Though not the only authority, the most modern reflection of these principles exists in Protocol I,[247] which the US has not ratified.[248] However, the US recognizes "certain provisions of Protocol I reflect customary international law or are positive new developments, which should in time become part of that law."[249] The American view respects Protocol I's provisions on military necessity, distinction, and proportionality.[250]

Accordingly, a brief overview of relevant provisions of Protocol I is in order. To begin, Article 35 provides basic rules that limit method and means of warfare, specifically not allowing use of weapons or methods of war that cause unnecessary suffering.[251] Next, Article

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[244]Protocol 1, *supra* note 223, at art. 35(2); HR art. 23(e); *see also*, Hague Declaration (IV, 3) Concerning Expanding Bullets of 29 July 1899, D. SCHINDLER & J. TOMAN, THE LAWS OF ARMED CONFLICT 103-105 (1973); 1 AM. J. INT'L. L. SUPP. 155 (1907); also available online at: <**http://www.icrc.org/unicc/ihl_eng.nsf/52d68d14de6160e0c12563da005fdb1b/f1f1fb8410212aebc125641e0036317c?OpenDocument**>.

[245]Protocol 1, *supra* note 223, at art. 40; "It is especially forbidden … to declare that no quarter will be given." HR, *supra* note 218, at art. 23(d)

[246]"In any armed conflict, the rights of the Parties to the conflict to choose methods or means of warfare is not unlimited." Protocol 1, *supra* note 223, at art. 35(1); "The rights of belligerents to adopt means of injuring the enemy is not unlimited." HR, *supra* note 218, at art. 22.

[247] Protocol I, *supra* note 223.

[248] Reagan, Presidents Message to the Senate Transmitting the Protocol, 23 WEEKLY COMP. PRES. DOC. 91 (Jan. 29, 1987), cited in Humanitarian Law Conference, *supra* note 214, at 419, note 10.

[249] Humanitarian Law Conference, *id.* at 421.

[250] *Id.* at 424-426.

[251] Protocol I, *supra* note 223, art. 35.

48 provides the basic rule that requires distinction.[252] Article 51 prohibits indiscriminate attacks and in doing so, uses the concept of proportionality.[253] Article 51 provides civilians with "general protection against dangers arising from military operations."[254] Civilians remain protected until "they take a direct part in hostilities."[255]

Article 52 defines military targets as "so far as objects are concerned, …those objects by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage."[256]

Article 57 provides combatants with planning factors in the attack to help limit civilian casualties. The article calls for feasible precautions in the attack, verifying the military nature of targets,[257] avoiding or minimizing collateral injury to civilians and civilian property,[258] refraining from attacks "which would be excessive in relation to the concrete and

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[252] *Id.*, art. 48.

[253] *Id.*, art. 51.

[254] *Id.* at art. 51 (1).

[255] *Id.* at art. 51 (3).

[256] *Id.* at art. 52(2).

[257] *Id.* at art. 57(2)(a)(i).

[258] *Id.* at art. 57(2)(a)(ii).

direct military advantage anticipated,"[259] canceling disproportionate attacks,[260] and warning of attacks where circumstances permit.[261]

In summary, US policy, based on the *Implementation Instruction*, obligates our armed forces to both respect and to apply by analogy military necessity, distinction, and proportionality as fundamental principles to no-fly zone operations. The next analysis to consider is the unique aspect of aerial operations. Air operations, as a specialized method of warfare, might also apply specialized legal regimes from similarly situated military operations.

D. Applying the Analogy—Lex Specialis of Maritime and Aviation Law

Must forces in operations other than war respect any specialized fields of law (*lex specialis*) for specific methods and means of warfare? More pointedly, is there a *lex specialis* governing no-fly zones derived from other legal regimes by analogy?

Arguably, the *Implementing Instruction* requires applying the fundamental principles of maritime exclusion zone law and military aerial interception law to no-fly zone operations. A review of legal regimes that regulate aviation and use of force in other mediums seems to

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[259] *Id.* at art. 57(2)(a)(iii).

[260] *Id.* at art. 57(2)(b).

[261] *Id.* at art. 57(2)(c).

make sense. Are naval exclusion zone operations analogous to no-fly zones? What about aviation regulations in general? Maritime exclusion zone law and aviation law seem readily applicable to no-fly zone operations..

1. Maritime Exclusion Zone Law

Maritime exclusion zones[262] must be publicly declared to warn and to allow time for ships to clear the area.[263] A proper declaration locates the zone, discloses the duration, details procedural requirements for permission to pass through the zone, and details sanctions imposed for violations of the zone, emphasizing the use of force option.[264]

Exclusion zones must be militarily effective, not just declared, in order to be lawful. This means enough naval forces must deploy to make the zone a credible threat to any vessels or aircraft improperly entering the area.[265] Neutrals and nonmilitary ships and aircraft should be given corridors or sea lanes to pass through the zone where and when such passage is feasible. Both the warning and availability of passage corridors should be done via a Notice to Mariners (NOTMAR) and a Notice to Airmen (NOTAM).[266]

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[262] *Supra,* Part II *C.*

[263] Fenrick, *supra* note 92, at 124.

[264] *Id.*

[265] *Id.*

[266] Annotated Naval Commander's Handbook, *supra* note 102, at 2.4.3.1.

Finally, exclusion zones must have a legitimate purpose, a *jus ad bellum*.[267] In war, this legitimate purpose is both lawful combat and self-defense. "There must be a proportional and demonstrable nexus between the zone and the self-defence requirements of the state establishing the zone."[268] During operations other than war, the legitimate purpose is often tied to UN Security Council action or consensus as well as regional security measures.

The *Corfu Channel Case*[269]emphasizes the warning requirement. Albania mined its territorial waters in the Corfu Channel, during peacetime, then told no other governments about the mines. Unwarned, two British destroyers hit the mines on October 22, 1946. Several crew members casualties occurred and both destroyers were damaged. The International Court of Justice held that states are obligated to refrain from using force against the rights of other states during peacetime. Furthermore, if force is to be used nonetheless, the using state must provide a warning prior to use of force. As the opinion put it:

> The obligations incumbent on the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefields exposed them. Such obligations are based, not on the Hague Conventions of 1907, No. VIII which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of freedom of the maritime communication and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.[270]

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[267] *Id.* at 125.

[268] *Id.*

[269] Corfu Channel Case (U.K. v. Albania), 1949 I.C.J. 4.

[270] *Id.* at 22.

Besides maritime law, aviation law presents another analogous specialized legal regime. Of particular relevance is the matter of aerial interception of intruding aircraft over sovereign airspace.

2. Aviation Law—Legal Regimes Regulating Use of Force and Airpower—Aviation law is founded on the parallel developments of military and civil uses for aircraft. Military aviation law and civil aviation law evolved from the common root of sovereignty of airspace, a fundamental tenant of international law. Cross-fertilization of concepts between military and civil aviation law contributed much to the aviation law discipline. Yet, the military use and the civil use of airspace remain distinct. As a result of their different purposes, military aviation and civil aviation matured into separate legal disciplines. These disciplines combine to influence the law applicable during no-fly zone operations.

a. Fundamental Concepts—The international legal regime of airspace relevant to no-fly zone operations includes sovereignty of airspace, the distinction between military and state aircraft, and due regard as fundamental concepts.[271] These concepts, in turn, influence the legal regime regulating military flight operations.

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[271] For the academic purposes of this paper, the no-fly zone is assumed to take place over sovereign territory. As such, it is a coercive intervention forcibly denying a sovereign State the use of its own airspace. Overflight issues for other States such as transit passage, and the law of the sea principle of innocent passage for ships are not distinguished or discussed. In this regard other States are only allowed to pass through a no-fly zone in accordance with the published warning or NOTAM. The no-fly zone displaces the otherwise international law

(1) Sovereignty of Airspace—The initial debate in framing a regime for air law was whether airspace would be sovereign or free.[272] Legal scholars initially advanced four theories.[273] These initial theories narrowed down to two opposite approaches: first, the *aer clausum* theory, which allowed the subjacent state to exercise sovereignty over the airspace above it; and second, the *aer liberum* theory, which permitted the free navigation through airspace by any state without regulation by subjacent states.[274] With sovereignty interests stirred by the use of airpower in World War I, the *aer clausum* theory became the accepted legal regime.[275] As reflected in the Chicago Convention on International Civil Aviation,[276] a fundamental principle of international law exists that each nation enjoys the exclusive sovereignty over the airspace above its national territory.[277] The actual boundaries of sovereign airspace are determined under law of the sea rules.[278]

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of civil aviation and its rules for overflight. Accordingly details on these rules are beyond the scope of this paper.

[272] Lieutenant Colonel Thomas A. Geraci, *Overflight, Landing Rights, Customs, and Clearances*, 37 A.F.L. Rev 155, at 156. *See also* Major George W. Ash, *1982 Convention on the Law of the Sea—Its Impact on Air Law,*26 A.F.L. Rev. 35, at 78-82; and, AFP 110-31, *supra* note184, at pp. 2-1 to 2-4.

[273] Major John T. Phelps, II, *Aerial Intrusions by Civil and Military Aircraft in Time of Peace,*107 Mil. L. Rev. 255 (1985) (Major Phelps explains the four theories as the complete sovereignty theory, the free air theory, the territorial air or navigable airspace theory, and the innocent passage theory. *Id.* at 267).

[274] *See* Geraci, *supra* note 268, at 156-157.

[275] *See* Ash, *supra* note 268, at 78.

[276] Convention on International Civil Aviation, *opened for signature* Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. 1591, 15 U.N.T.S. 295 (Entered in force for the U.S. on Apr. 4, 1947) [hereinafter, Chicago Convention]. "The contracting States recognize that every state has complete and exclusive sovereignty over the airspace above its territory." *Id.* at Article 1.

[277] *Id. See also* Henkin, *supra* note 170, at 478-482.

[278]*See generally* Ash, *supra* note 268; Annotated Naval Commander's Handbook, *id.* at 1-69, Figure 1-1 (depicting air and maritime boundaries; duplicated in this paper at Appendix 2).

(2) The Distinction Between State and Civil Aircraft—This distinction is codified in the Chicago Convention at article 3(b). "Aircraft used in military, customs and police services shall be deemed to be state aircraft."[279] By its terms, the Chicago Convention does not apply to state aircraft.[280]

(3) Due Regard—The Chicago Convention's article 3(d) declares "contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft."[281] The US position on this aspect of the relation of the Chicago Convention to military aircraft is detailed in AF Pam 110-31.[282] DOD Directive

b. Law of Armed Aerial Conflict—In the beginning, military aviation was not considered much of a threat to warfare. In 1913, one European general opined, "aviation is a fine sport. I even wish officers would practice the sport, as it accustoms them to risk. But as an instrument of war, it is worthless (*c'est zero*)."[283] Early military aviation law concerned itself with aerial bombardment. Military aviation law, as discussed later, evolved as aircraft and weapons technology improved the capability to deliver combat firepower. World War I

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[279] Chicago Convention, *supra* note 272, at art. 3.

[280] *Id.*, at art. 3(b)("This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft." *Id.*).

[281] *Id.*, at art. 3(d).

[282] *See* AF Pam 110-31, *supra* note 205, at 2-6, note 29 (referring to DOD Directive 4540.1, Operating Procedures for United States Military Aircraft Over the High Seas, June 23, 1962).

[283] Ferdinand Foch as quoted *in* John H. Morrow, Jr., *Expectation and Reality: The Great War in the Air,* AIRPOWER JOURNAL 27, at 29 (Air University, Winter 1996).

demonstrated aviation's potential for combat. World War II put the exclamation mark on the lethality of air delivered weapons against aerial and ground targets.

Modern military aviation law still emphasizes targeting decisions and technology. The law concerns itself with traditional law of armed conflict principles of distinction, necessity, and proportionality. Precision guided munitions increase the expectation and capability to limit collateral damage. Here the law focused on limiting the devastating potential of aerial warfare on civilians and civilian objects, emphasizing the need for distinction or discrimination between military targets and noncombatants.

c. *Law of Civil Aviation and Air Interception Incidents*—As commercial applications for aviation arose, particularly air transport of people and cargo, civil aviation law developed to promote safe and profitable air transportation. The Chicago Convention's preamble reflects the driving forces behind civil aviation law.

> (T)he undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically; Have accordingly concluded this Convention to that end.[284]

As the airline industry developed into an international trade, the need to safely enter sovereign airspace in a common manner became apparent. Otherwise, each nation could have its own flight rules, procedures, languages and as one might imagine, chaos would

[284] *Supra* note 253.

ensue. Of relevance to this paper was the development of rules and procedures for incidents of intrusions of sovereign airspace by civil aircraft. Similarly, the practice of intercepting those civil aircraft as well as state aircraft provides analogous regimes for consideration in no-fly zone operations.

Air interception practices and law are not always in synchronization. No international treaty regulates military air to air combat *per se*.[285] Although there was an attempt to codify aerial warfare rules in 1923, the first international treaty to deal with aircraft in combat was not codified until 1977.[286] The first modern American secondary source of international law of aerial armed conflict was actually published a year earlier in 1976.[287] As to Protocol I, it deals specifically with air to ground attack and civilians as follows:

> The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.[288]

Air to air combat is only specifically regulated by Protocol I when aerial combat affects civilian lives and objects on land:

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[285] Parks *in* MOORE & TURNER, *supra* note 92, at 470-471.

[286] *Id.* note 9 ("Prior to Protocol I, only air forces were without specific regulation." *Id.*).

[287] AF Pam 110-31, *supra* note 205.

[288] Protocol I, *supra* note 202, at art. 49(3).

> In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in the armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.[289]

Besides the treaties and publications on military rules there are aerial incidents involving military force shooting down intruding aircraft. Although most instances involve air to air engagements, there are also incidents of naval surface to air and antiaircraft artillery attacks on aircraft. The vast majority of these engagements are against civil aircraft.[290] However, there are some cases of military aircraft shoot downs as well.[291]

These aerial engagements, particularly the shoot down of KAL Flight 007,[292] prompted the amendment of the Chicago Convention and resulted in article 3 *bis* which provides:

> (a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

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[289] *Id.* at art. 57(4).

[290] *See* Phelps, *supra* note 269, at 276-291(providing analysis of attacks on civil aircraft such as Bulgarian attack on Israeli airliner (El Al), Israeli Attack on Libyan Arab Airlines, Soviet attack on Korean airliner (KAL 007), and USS Vincennes attack on Iran Air 655). *See also* David K. Linnan, *Iran Air Flight 655 and Beyond: Free Passage, Mistaken Self-Defense, and State Responsibility*, 16 YALE J. INT'L L. 245 (1991).

[291] *See* Phelps, *Id.* at 275-276, 287-288 (providing analysis of attacks on intruding military aircraft such as Yugoslav attacks on USAAF C-47s (Aug. 9 and Aug. 19, 1946), Soviet attack on U-2 (May 1, 1960, flown by Francis Gary Powers), Soviet attack on RB-47 while outside Soviet territorial airspace (July 1, 1960).

[292] *See* Masahiko Kido, *The Korean Airlines Incident on September 1, 1983, and Some Measures Following It,* 62 J. AIR L. & COMMERCE 1049 (1997); Phelps, *supra* note 242, at 290-291; *Destruction of Korean Air Lines Flight 007, 30 Dec. 1983, ICAO: Action With Regard to the Downing of the Korean Air Lines Aircraft*, 23 I.L.M. 864 (1984).

(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.

(c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article....[293]

As to military interceptions of intruding military aircraft, it seems that national self-defense as an overriding security interest may justify use of force.[294] However, these security exceptions require an overwhelming security interest, a proportionality analysis that balances the loss of life with the security interest, and a warning before shooting down the aircraft. The legal norm stems from the Corfu Channel case.[295] The Gulf of Sidra Incident reinforces this norm.[296]

The Gulf of Sidra incident saw two States claim self defense to justify their use of force against each other's military forces during peacetime. The international community accepted

[293] Chicago Convention, *supra* note 272, at art. 3bis (reproduced along with a signatories list in Appendix 3 of this paper. Article 3bis requires 102 signatories to enter into force. As of March 30, 1997, there were 92 signatories. The US has not yet adopted Article 3bis).

[294] *See* Phelps, *supra* note 269, at 293 (citing Israel and US Memorials on the Bulgarian downing of an Israeli El Al civil airline flight on July 27, 1955. *Id.*).

[295] *Supra* note 269.

the outcome. "This acceptance may be seen as reflecting a consensus among states that the norms governing ROE include both the right to return fire if attacked and the duty to warn intruders before firing upon them."[297]

E. Use of Force During No-Fly Zone Operations—Assembling the Mosaic

To begin, we must lawfully declare and then credibly deploy sufficient air forces to coerce any no-fly zone. The declaration must warn both the State intervened as well as the world community of the particulars of the no-fly zone. The US accomplishes this by issuing a NOTAM concerning the area of operations of a no-fly zone.[298] The particular no-fly zone warnings and NOTAMs will detail the zones boundaries, warn of the sanctions taken to enforce the zone, to include aerial interception, provide the frequency to monitor for flight safety, and set guidelines for permission to transit the airspace in the applicable NOTAM.[299]

Next, the fundamental principles of military necessity, distinction, and proportionality join with the *lex specialis* of maritime and aviation law regimes to establish an analogous legal regime for no-fly zone operations. US policy on use of force and the law of armed conflict

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[296] *See generally*, Steven R. Ratner, *The Gulf of Sidra Incident of 1981: A Study of the Lawfulness of Peacetime Aerial Engagements*, 10 YALE J. INT'L L. 59 (1984).

[297] *Id.* at 74.

[298] *See* Schmitt *supra* note 106, at 58-59 (discussing the NOTAM system used in US Navy and Air Force flight operations).

results in an obligation for US Forces to apply military necessity, proportionality and distinction as fundamental principles, reflected in Protocol I, to no-fly zones.

The Protocol I proportionality standard found in Article 51, para 5(b), limits targeting decisions to military objectives, such as hostile military aircraft or air defense artillery weapons. Commanders may not attack civilian places or people by a means or method likely to inflict damage that is excessive to the military advantage expected to be gained. Meanwhile, article 57 imposes affirmative duties on combatants to reduce civilian risks through feasible precautions in the attack. Article 57 would require jet fighters on counter air and suppression of enemy air defense (SEAD) patrols to exercise "constant care... to spare the civilian population, civilians, and civilian objects."[300]

While enforcing the no-fly zone, we should use coercive force against hostile aircraft, based on their acts, intent, or when meeting status-based criteria as hostile force. However, civil aircraft that violate the NOTAM procedures should not be fired upon in any scenario other than self-defense. There is no need to pause and consider or to otherwise hesitate to apply force in self-defense, under any rules of engagement, as will be discussed in the next section.

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[299] *See e.g.,* KFDC Flight Information Region, NOTAM A0050/96 (notice for Operation NORTHERN WATCH and Operation SOUTHERN WATCH)(on file with author and reproduced at Appendix 4).

[300] Protocol I, *supra* note 202, at art. 57 (1).

In sum, no-fly zone methods and means of enforcement, particularly targeting decisions and rules of engagement, should apply the Protocol I proportionality standard. Recall, US policy is not that the law of armed conflict applies *per se* to military operations other than war; but rather, the US forces apply, as a matter of policy choice, the fundamental principles of the LOAC during expeditionary MOOTW.[301]

V. What Purpose Do Rules of Engagement Serve in a No-Fly Zone?

What is the relationship between rules of engagement, international law, national policy, and military objectives? Who decides which rules apply and how? What purposes do rules of engagement serve? What kinds of rules exist? Why have status-based rules of engagement? Who decides which rules apply and how? These are the questions answered in this section.

A. Defining Rules of Engagement. Rules of Engagement are the commander's limits on the amount, manner, and means of applying force.[302] Rules of Engagement serve varied political,

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[301] The policy is founded on DoD Dir. 5100.77, *supra* note 211 and CJCSI 5810.01, *supra* note 212. This policy begs the question: are there then situations where as a matter of policy we would choose not to apply all, some, or none of the laws of armed conflict? Here is where a contextual approach as opposed to a positivist approach explains the difference. The bottom line is yes. There are political instances where the laws of armed conflict may not be in our national best interests. Such as the oft-debated best interest, or utility, in a democratic and legitimate government ordering the assassination of Saddam Hussein. All this is in addition to moral considerations of humanitarian intervention and ideas of just cause for recourse to interventionary coercion as found in expeditionary operations.

military, and legal purposes.[303] This section will analyze the three main purposes of rules of engagement, then introduce rules of engagement categories.

1. ROE's Legal Purpose—Rules of engagement become part of the law of any particular military operation. To understand the nature of ROE, one must recall the legal basis that regulates use of force during US military operations.

The primary legal contribution of rules of engagement is compliance with the law of armed conflict. The requirement to comply with the law of war stems from international and domestic law. Primary international law sources requiring compliance are the 1907 Hague Conventions, particularly requiring signatory nations to "issue instructions to their armed land forces... in conformity with... the Laws and Customs of War,"[304] and the 1949 Geneva Conventions' requirements to "to ensure respect" for the law of war.[305] The relationship between rules of engagement and the law of armed conflict is key to understanding both the genesis and nature of ROE. Rules of engagement are not the same as the law of armed

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[302] JOINT PUB 1-02 defines ROE as: "(d)irectives issued by competent military authority which delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered. Also called rules of engagement." DOD DICTIONARY, *supra* note 7.

[303] CAPT J. Ashley Roach, JAGC, USN, *Rules of Engagement,* NAVAL WAR COLLEGE REVIEW, (Jan.-Feb. 1983), PP. 46-55.

[304] Hague Convention No. IV, Respecting the Laws and Customs of War on Land, 18 Oct 1907, article 1, 36 Stat. 2277, Treaty Series No. 539, Malloy, Treaties, Vol. II, p. 2269; reprinted at DA Pam 27-1, p. 6 [hereinafter Hague Convention IV]; Hague Convention III Relative to the Opening of Hostilities, 18 Oct 1907, 36 Stat. 2259, Treaty Series No. 538, Malloy, Treaties, Vol. II, p. 2259; reprinted at DA Pam 27-1, p. 2, and at AFP 110-20, chap. 3 [hereinafter Hague Convention III].

[305] Geneva Conventions I, II, II, and IV, *supra* note 201.

conflict.[306] "The law of armed conflict binds the actions of nations and their armed forces. The United States government can, by its own action, change its ROE; international law, however, can be changed only by international agreement or consistent practice of nations."[307]

2. ROE's Political Purpose

"(T)he aim of the military action is an equivalent for the political object...."[308]

—Carl von Clausewitz, On War, 1832

Political purposes served by rules of engagement are distilled from those policies outlined in the NSS[309] and the NMS.[310] The primary purpose of the US Armed Forces is to fight and

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[306] Relation to Rules of Engagement:

> "The law of armed conflict is not the same thing as 'rules of engagement.' These rules of engagement are guidelines that the United States imposes on its own military forces, while the law of armed conflict is binding on all nations and their armed forces. (More accurately, customary international law is binding on all nations; international law created by treaty is only binding on nations party to the treaty.) The United States government can, by its own action, change its rules of engagement. International law, on the other hand, can usually be changed only by an international agreement. The law of armed conflict is an important influence in drafting the rules of engagement, but it is not the only influence. *In their final form, rules of engagement usually reflect political and diplomatic as well as legal factors.* The rules of engagement will, then, often restrict operations far beyond the requirements of the law of armed conflict. The distinction between the law of armed conflict and the rules of engagement should always be kept in mind."

AFP 110-31, *supra* note 205, at para. 1-2 (*emphasis added*).

[307] Roach, supra note 277, at 46.

[308] CARL VON CLAUSEWITZ, ON WAR 110 (Anatol Rapoport, ed., 1968).

[309] 1997 NSS, *supra* note 17.

win the nation's wars and to otherwise protect US national interests.[311] Yet, "(t)he U.S. military conducts smaller-scale contingency operations to vindicate national interests."[312] These US national interests exist in three priorities: vital interests, important interests, and humanitarian interests.[313]

The political triggering mechanisms for commitment of US military forces highlights the distinction between the three categories of national interests: *vital, important,* and *humanitarian.*[314] To begin, threats to national survival necessarily (automatically) trigger political leadership's consideration of use of military forces to protect our nation's *vital interests.* Accordingly, "(a)t the direction of the NCA, the Armed Forces are prepared to use decisive and overwhelming force, unilaterally if necessary, to defend America's *vital interests.*"[315] Next, the political decision to employ armed forces to protect *important interests* is optional. "The use of our Armed Forces may be appropriate to protect those

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[310] 1997 NMS, *supra* note 15.

[311] *Id.* at 1.

[312] 1997 NSS, *supra* note 17, at 16.

[313] *Id.* at 2 ("US national interests fall into three categories. First in priority are our *vital interests*—those of broad, overriding importance to the survival, security, and territorial integrity of the United States. ... Second are *important interests*—those that do not affect our national survival but do affect our national well-being and the character of the world in which we live. ... Third, armed forces can also assist with the pursuit of *humanitarian interests* when conditions exist that compel our nation to act because our values demand US involvement.").

[314] *Id.* (The 1997 NSS also explains that the criteria used to commit US Armed Forces to protect any national interest "must be based on the importance of the US interests involved, the potential risks to American troops, and the appropriateness of the military mission." *Id.*). *See* Colonel Edwin J. Arnold, Jr., *The Use of Military Power in Pursuit of National Interests*, VOL. XXIV PARAMETERS 4-12 (Spring 1994) (COL Arnold compares the Reagan, Bush, and Clinton Administrations' criteria for use of force. COL Arnold also offers his view on criteria, which should be met before using US Armed Forces to pursue national policy interests).

[315] 1997 NMS, *supra* note 15 (emphasis added).

interests."[316] Finally, humanitarian interests motivate American military intervention on behalf of deterring gross violations of human rights.[317]

It follows then that ROE are tailored to accomplish these political goals. Indeed, expeditionary operations require the greatest amount of tailoring because of the increased political aspect of these military operations other than war.[318]

3. ROE's Military Purpose

Rules of engagement serve the primary military purposes of discipline and restraint. Operationally, ROE should always allow individual and unit self-defense, should define the boundaries of use of force, and should reflect the commander's intent.[319] "Exercise of naval power will be inherently limited, and hence affected by the law, which aims at limitation and seeks restraint. All naval operations are, to this extent, limited."[320] Rules of engagement in this regard are the legal limits on military use of force.

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[316] *Id.*

[317] 1997 NSS, *supra* note 17.

[318] *See* Taw & Vick, *supra* note 9, at 209, which states "(b)oth ground and air forces face fundamentally different rules of engagement in MOOTW."

[319] Roach *supra* note 277, at 48.

[320] O'Connell, *supra* note 14, at 60.

During operations other than war, rules of engagement combine meet all three purposes in a context of tensions short of war. In a word, restraint characterizes the rules of engagement for American expeditionary operations. For example, in Operation PROVIDE COMFORT, US force "(r)estraint kept a potentially explosive situation with Iraqi armed forces in check. US forces adhered to strict ROE which went into effect when the ground exclusion zone was expanded in concert with the air exclusion zone, allowing the Kurds to return home from temporary shelters,"[321]

By analyzing rules of engagement's nature, one sees that political leaders, military leaders, and military lawyers pursue rules of engagement for their own purposes. When integrated, their separate roles and missions build effective rules of engagement. Effective rules of engagement unite these purposes. In practice, effective rules of engagement doctrine places primary responsibility on the military leaders, with support from the operation planners and lawyers, and overarching policy guidance from the NCA policy-makers.

B. Categorization of Rules of Engagement

Rules of engagement may be considered in various ways.[322] This paper focuses on just two of the broad categories that could apply during American expeditionary operations.[323]

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[321] JOINT PUB 3-07, *supra* note 9, at II-7.

[322] *See e.g.,* Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 3 (generally discussing ten functional types of ROE and training methods needed to instill related fundamental concepts across the conflict spectrum).

1. By Planning Type: Standing Rules of Engagement (SROE)[324] *and Tailored Rules*—The SROE provide a template for all US Forces' rules of engagement.[325] They are the default rules of engagement for any expeditionary operation and the jump point for tailoring specific rules for a specific operation. One scholar recently described their utility,

> For operations that are inherently peaceful, the SROE allows the use of force for defensive purposes and only in reaction to a hostile act or clear indication of hostile intent. For hostile operations approaching war, on the other end of the continuum, the SROE still provides for the use of force defensively, but also delineates when offensive force may be used.[326]

2. By Hostility Level: Status-Based and Conduct or Threat-Based—In this regard, one considers hostile act, hostile intent, and hostile force as terms of art. A hostile act is an attack against US forces, individually or collectively, and includes associated persons and property.[327] "Hostile intent is the threat of the imminent use of force."[328] Proportional force

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[323] For instance two other categories often used are: (1) military activity or tension level, such as wartime, peacetime, and training; and, (2) by the medium wherein force is employed—air, ground or water—an area of operations or even one specific operation could have separate air rules, ground rules, naval surface rules, and naval subsurface rules of engagement. Conceivably several operations could concurrently take place within one geographic theater or region. This scenario especially occurs in joint and combined operations. For example, at Incirlik Air Base, Turkey, in 1994, there were American airlift missions in support of routine USAFE operations, there were Operation PROVIDE COMFORT fighter operations which included Turkish aircraft, and finally, there were independent Turkish air missions along the border with Iraq that were not at all part of Operation PROVIDE COMFORT. All of these separate missions applied distinct rules of engagement.

[324] CJCSI 3121.01, Standing Rules of Engagement for US Forces [hereinafter, SROE].

[325] *See* Professor Richard J. Grunawalt, *The JCS Standing Rules of Engagement: A Judge Advocate's Primer*, 42 A.F. L. REV. 245 (1997).

[326] Major Dawn R. Eflein, *A Case Study of Rules of Engagement in Joint Operations: The Air Force Shootdown of Army Helicopters in Operation PROVIDE COMFORT*, 44 A.F. L. REV. 33, at 42 (1998) .

[327] Roach, *supra* note 277, at 50.

may be used to repel any attack whether actual or imminent.[329] Status-based rules of engagement are those that depend on a force being declared hostile. A hostile force is any force that has attacked, has threatened imminent attack evidencing hostile intent, or has been declared hostile by a commander. Once declared hostile, the hostile force may be engaged upon their positive identification under the promulgated rules of engagement.[330]

C. How are Rules of Engagement Administered?

US military doctrine places ultimate responsibility for rules of engagement on the national command authorities (NCA).[331] Rules of engagement responsibility flows from the NCA[332] down to unified command combatant commanders and their deployed forces.[333] The Chairman, Joint Chiefs of Staff (CJCS), and the Joint Chiefs of Staff (JCS) regulated the format and procedures as well as the SROE as default rules. An operation's rules are found in messages per Appendix E, Enclosure B, of the SROE and in published operation orders at Appendix 8, Annex C according to the JOPES[334] format.

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[328] *Id.*

[329] *Id*

[330] *See supra* note 6.

[331] DOD Directive 5100.77, DOD Law of War Program.

[332] CJCSI 3121.01, 1 October 1994, Standing Rules of Engagement for US Forces (hereafter, SROE).

[333] SROE Enclosure B (Supplemental Measures) and Enclosure C (Compendium and Combatant Commanders' Special rules of engagement) allow war-fighting CINCs to tailor rules of engagement to mission-specific and AOR-specific needs.

[334] Joint Operation Planning and Execution System.

Doctrine places primary staff responsibility for rules of engagement on the plans and operations officers.[335] Secondary staff responsibility is placed on the judge advocates. However, DOD and service directives, policy, and practice evolved to where military lawyers take the lead on drafting,[336] reviewing,[337] and teaching[338] rules of engagement—in effect, taking "ownership" of the rules of engagement process.

The NCA and US commanders are accustomed to military lawyers' (JAGs) substantial involvement and responsibility for rules of engagement issues and processes.[339] During the Gulf War, "the Secretary of Defense tasked the General Counsel to review and opine on such diverse issues as... DOD targeting policies; the rules of engagement; the rules pertinent to maritime intercept operations... and similar matters of the highest priority to the Secretary and DOD."[340] This operational reliance on JAGs made the Persian Gulf War "the most legalistic war we've ever fought."[341]

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[335] Army Operations Officers are in the S-3/G-3/J-3 sections. Air Force operations and plans officers are in the DO/XO sections. *See* Joint Pub 5-00.2: JOINT TASK FORCE PLANNING GUIDANCE AND PROCEDURES

[336] Contemplated in OPS LAW HANDBOOK, *supra* note 43, at 8-4.

[337] Memorandum of the Joint Chiefs of Staff , MJCS 0124-88, 4 Aug 1988, Implementation of the DOD Law of War Program (requiring legal review of plans and rules of engagement).

[338] DOD Directive 5100.7, DOD Law of War Program, *supra* note 190; AFI 51-401, Training and Reporting to Insure Compliance with the Law of Armed Conflict (1 July 1994).

[339] *See* Jonathan T. Dworken, *Rules of Engagement Lessons from Restore* Hope, VOL. LXXIV, NO. 9 MILITARY REVIEW 26-34 (September 1994); See *also* Major Karen V. Fair, *The Rules of Engagement in Somalia—A Judge Advocate's Primer*, SMALL WARS AND INSURGENCIES, Vol. 8, No. 1, (Spring 1997), pp. 107-126).

[340] *Final Report to Congress, Conduct of the Persian Gulf War* 607 (April 1992).

[341] *Lawyers in the WarRoom*, __ ABA JOURNAL 53 (December 1991).

Yet, politico-legal aspects of war extend beyond conventional warfare to our armed forces' expeditionary operations other than war.[342] These operations are often characterized as "legally intense operations."[343] The more political the mission, the more often the NCA, policy-makers, commanders, operation planners, and their lawyers need to review and if needed, update the operation's rules of engagement. With each change in mission, or other factors of change, we need to review rules of engagement. This is especially important with policy changes.[344]

D. What Nuances Exist for Rules of Engagement in a No-Fly Zone?

The central nuances for no-fly zones are the political and military aspects of the rules of engagement. On the political side, there is much concern over any threat to US forces, rules of engagement must compliment force protection and avoid fratricide. Otherwise, the political fallout of injuries to American forces may critically affect the political will of the American people to support expeditionary operations, to include humanitarian intervention missions.

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[342] As previously referenced at *supra* note 9, Air Force operators have started calling these OOTW missions "contingency operations."

[343] *See, e.g.,* LTC Richard B. Jackson, Professor of International and Operational Law, Operational Law Overview, Lecture at The Judge Advocate General's School, United States Army, (Fall 1997)(outline on file with the of International and Operational Law Department, The Judge Advocate General's School, United States Army Charlottesville, Virginia).

[344] Such as the policy changes that occur after national elections. As an example, consider the impact of policy changes in Vietnam's air campaigns between the Johnson and Nixon Administrations.

As to military aspects, one should realize that no-fly zones are essentially air superiority missions. Success in air superiority missions often depends on centralized control and decentralized execution of the coercive air assets. "The ROE establish the framework for decentralized execution. In order to give operators the ability to respond to and exploit unforeseen events, ROE must permit them to make timely decisions in the air"[345] In efforts to prevent fratricide, many leaders restrain the use of force by centrally controlling the forceful response to all but instances of self-defense. Military leadership should understand that there is a trade-off. "Centralized execution might reduce the probability of fratricide, but it will also reduce the flexibility and effectiveness of the mission."[346]

As to legal aspects of rules of engagement, no-fly zone operations should tailor the rules to make certain (1) their is a necessity to engage, (2) that pilots distinguish between civilian and military aircraft, and (3) that aerial use of force is proportional. As often is the case, these legal considerations are easier said than done. The Black Hawk fratricide incident puts the legal aspects into a realistic perspective for military lawyers and aviators alike.

[345] McKelvey, *supra* note 118, at 7.

[346] *Id.*

VI. The Black Hawk Fratricide Incident

One scholar maintains, "[t]he problems faced by soldiers and decision-makers in armed conflicts have not been explored in depth.... [T]here is also a case for judging the laws of war by the harsh test of how they operate, or fail to operate, in the circumstances for which they were designed."[347] Similarly, rules of engagement should be judged by how the resulting rules meet or fail to meet their intended purposes. With this in mind, Operation PROVIDE COMFORT's rules of engagement are analyzed for how well they operated or failed to operate in the contingency circumstances for which they were designed.

To analyze the propriety of Operation PROVIDE COMFORT's status-based rules of engagement and their nexus with the 14 April 1994 fratricide, one must first, discover Operation PROVIDE COMFORT's various political, military, and legal goals. Operation PROVIDE COMFORT's component organizations and their external organizational relationships provide the full picture of what was Operation PROVIDE COMFORT and what happened on 14 April 1994.

The events leading up to the shoot-down may be studied from the various perspectives of the main parties involved: the political leaders, the military leaders, the fielded forces, and the military operational lawyers. The various perspectives of the deployed units emphasize the risk inherent in a No-Fly Zone contingency operation.

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[347] Adam Roberts, The Laws of War: Problems of Implementation In Modern Conflicts, 6 Duke J. Comp. & Int'l. L. 11(Fall, 1995), p. 16.

A. What was Operation PROVIDE COMFORT?

The National Command Authority (NCA) directed the US military to begin Operation PROVIDE COMFORT in April 1991.[348] The operation's mission was impressive--provide humanitarian assistance to over a million Kurdish refuges in northern Iraq.[349] Starting 7 April 1991, OPC airdrop missions over northern Iraq provided "food, blankets, clothing, tents, and other relief-related items for refugees...."[350] The United States declared and enforced a no-fly zone with a coalition of aerial forces from France, Turkey, the United Kingdom, and the United States. These forces "conducted air operations in a Tactical Area of Responsibility (TAOR) north of 36 degrees north latitude in Iraq."[351] In addition to the coalition air operations over the No-Fly Zone, the Turkish air force flew independent special missions,[352] and the US Army established ground support missions in northern Iraq, both within and outside the UN security zone, but north of the 36th parallel.[353]

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[348]Accident Investigation, *supra* note 1, at Executive Summary 1.

[349] COL PHILLIP A. MEEK, *Operation PROVIDE COMFORT: A Case Study in Humanitarian Relief and Foreign Assistance*, 37 A.F. L. REV. 225, 226 (1994).

[350] *Id.*

[351] *Id.*

[352] There has been much discussion of the nature of the independent Turkish military operations over Turkey's international border. This paper's focus is not on the impact of these operations on the OPC coalition. An interesting issue not addressed is whether or not information gained through Turkey's participation in OPC was later used to conduct independent military actions against Kurdish political and paramilitary organizations in Iraq. *See, e.g.,* John Pomfret, *Mixed Results Seen In Turkish Attack On Kurds in Iraq*, Wash. Post, Mar. 31, 1995, A33.

[353] Details of the Army ground mission are summarized in the Accident Report, *supra* note 1.

1. United Nations Perspective--On 5 April 1991, UN Security Council Resolution 688 condemned Iraq's oppressive treatment of its civilian population, and called for humanitarian relief.[354] Considering its UN Charter obligations to maintain international peace and security,[355] the Security Council passed Resolution 688:

> Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region,
>
> Deeply disturbed by the magnitude of human suffering involved,
>
> ....(The Security Council,)
>
> 1. Condemns the repression of the Iraqi civilian population..., including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;
>
> 2. Demands that Iraq... immediately end this repression...;
>
> 3. Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq...;
>
> 4. Requests the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, ...on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all forms inflicted by the Iraqi authorities;
> ....
>
> 6. Appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts;

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[354] *Supra* note 5.

[355] U.N. CHARTER, *supra* note __, at art. 39, art. 40, and art. 42.

7. Demands that Iraq cooperate with the Secretary-General to these ends;[356]

2. Political Perspective--This contingency mission served not only the peace and security objectives of the UN Security Council, but also the political objectives of the NCA. American public opinion strongly favored our participation in the Kurdish humanitarian relief effort.[357] Political opinion polls "were now showing that Americans did not want to abandon the Kurds, even if it meant using American forces to protect them."[358] Three years later, public opinion still favored US military participation.[359] "Washington has multiple foreign policy objectives in the Iraq operation, and yesterday's accident does not change them."[360] National security interests for initiating Operation Provide Comfort were regional stability and humanitarian relief.[361]

These security interests dovetailed with President Clinton's National Security Strategy of global engagement and enlargement.[362] Indeed, the 1994 NSS specifically noted our political resolve to contain Iraq and to support the Kurdish people through Operation PROVIDE

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[356] *Supra* note 5

[357] Meek, *supra* note 324.

[358] *Id.* at 225, n. 2, quoting Daniel Schorr, *Ten Days That Shook the White House*, 30 COLUM. JOURNALISM REV. at 22 (July/August 1991).

[359] Caryle Murphy and Thomas W. Lippman, *'It's Important Work' U.S. Still Committed to Protecting Kurds*, Washington Post, Apr. 15, 1994), at A1.

[360] *Id.*

[361] White House Press Conference, President Bush, 17 April 1991.

[362] The White House, *A National Security Strategy of Engagement and Enlargement* (Washington, The White House, 1994) [hereinafter, 1994 NSS].

COMFORT.[363] According to Secretary of Defense Perry, "(t)he events of April 14 must be viewed in the context of three years of safe and successful operations in deterring Iraqi aggression and assisting the people of northern Iraq."[364] Secretary Perry's word choice and order suggests that the NCA's priorities of national interests were first, to deter Iraqi aggression and second, to provide humanitarian relief.

3. *Command and Military Perspective*--US European Command had combatant command responsibility for the operation. The rules of engagement were developed by EUCOM staff and approved by the CINC. Under his combatant command authority, the CINC directed the creation of a Combined Task Force (CTF) to conduct operations in northern Iraq. For their part, Meanwhile, the Joint Force Air Component viewed the primary reason for Operation PROVIDE COMFORT as "to protect the Kurdish area, restricted area, and also to operate the no-fly zone above the 36th parallel."[365] The Air Force's emphasis was enforcing the no-fly Zone. The no-fly zone was considered a proud "display of force and resolve."[366] Similarly, the Army mission proudly focused on the ground relief effort and force protection within the security zone.

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[363] *Id.* at 25, "We have instituted a new dual containment strategy aimed at both Iraq and Iran. We have made clear to Iraq it must comply with all the relevant Security Council resolutions, and we continue to support oppressed minorities in Iraq through Operations Provide Comfort and Southern Watch."

[364] Hon. William J. Perry, Secretary of Defense, 12 July 1994 Memorandum, SUBJECT: *Aircraft Accident and Corrective Action* (copy in possession of author).

[365] AFR 110-14, Accident Investigation, *supra* note 1, Testimony of controlled Witness No. 23, at 51.5.

[366] *HOW TO BE A MAD DOG/DUKE, OPC MISSION DIRECTOR AND AIRBORNE CONTROL ELEMENT*, OPC Mission Director Read File, 39th Operations Group (USAFE) 2 (1994) (copy in possession of author).

4. Legal Perspective--From the legal perspective "(d)etermining the appropriate ROE was an early priority for the forces providing security to the relief effort. This task was more complicated than usual because the operations involved more than one nation... and the ROE reflected the difference in doctrine or legal requirements of the participating nations."[367] Initially, there was more concern over the continuing conflict on the ground between Kurds and Iraqi military forces. "A decision had to be made whether to authorize the use of force in self-defense only, or whether to authorize more aggressive ROE because of hostilities in the area and the fact that the CTF would be between advancing Iraqi forces and the Kurdish refugees."[368]

B. The Black Hawk Shoot Down

Consideration of the threat condition, terrain and weather, and friendly forces all factored into the Black Hawk fratricide incident. After about four months of relative calm, a German civilian reporter was murdered on 3 April 1994 and local Kurdish sources alleged the Iraqi government was responsible. The previous military activity was as follows:[369]

1. Iraqi small arms fire along the security zone on 19 December 1993;

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[367] *Supra* note 324 (MEEK Article 37 AFLR), at 236-237 (here, Col Meek also notes the combined operation had to reconcile that "some nations did not permit the use of deadly force in response to a demonstration of hostile intent..., requiring instead that an individual or unit actually receive hostile fire before responding with fire.").

[368] *Id.*

[369] Accident Investigation, *supra* note 1, at Tab AC-8.

2. SA-3 site bombed by coalition F-51s and F-16s on 19 August 93;

3. SA-2 destroyed after tracking F-4Gs on 18 April 1993;

4. Anti-aircraft artillery cluster bombed after firing at F-16s on 9 April 1993; and,

5. Iraqi MiG-23 shotdown by US F-16 upon violation of no-fly zone on 17 Jan 93.

As to environmental factors, the terrain was hilly and difficult to navigate at treetop or nape-of-the-earth level. However, the weather was mild and the sky was clear during flight operations on 14 April 1994.[370] No traffic was expected in the TAOR until after the fighter sweep.

The next analysis is of the F-15 actions. The aviators, callsigns "Tiger-1" and "Tiger-2" took off at 0635Z hours. Tiger-1 was lead, with Tiger-2 as his wingman. They received standard pre-mission briefings describing the current situation at Operation PROVIDE COMFORT, intelligence, weather, and the day's air tasking order (ATO). The pilots entered the tactical area of operations (TAOR) and "picked up a helicopter tracking northwest bound."[371] The fighter pilots then began identifying the unknown helicopters. According to the wingman, "[Lead] initially called them 'Hinds, no Hip, confirm Hind.' I was looking down. I did not go as low as he did on that initial pass. I was looking at shadows. It appeared to be a Hind to me. As I pulled off he confirmed they were Hinds."[372]

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[370] Article 32 Testimony of the F-15 pilots.

[371] *Supra* note 1.

[372] *Id.*

The status based rules of engagement required no additional analysis of hostile act or hostile intent.[373] Under the ROE, the pilots had to identify, visually or electronically, their targets as Iraqi military aircraft before shooting.[374] Once they identified Iraqi military aircraft flying north of the 36th parallel, the F-15s' mission[375] was to engage the two misidentified helicopters. Tiger-2 described the air interception and engagement:

> Basically, [lead] came in took the first one out with an AMRAAM. ... He called off. I called in with the heaters and shot mine. The AIM-9 pulled a good deal of lead to the point that I thought it was going for a hot-rock then it slammed in and took 'em out. Flew over the crash site twice. .... Saw no survivors. Looked like the helicopters pretty much came apart when they were hit. From looking at the pointy-talky they give me here in the cockpit, I can confirm that what I saw appeared to be a HIND.[376]

VII. INCIDENT ANALYSIS AND LESSONS

Several lessons are gleaned from this incident to improve future US no-fly zone operations. We should be cautious about status-based rules of engagement. We should consider applying the Chicago Convention article 3 bis air interception procedures for

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[373] Based on personal interview with Accident Investigation Controlled Witness No. 23, *supra* note 1.

[374] Testimony of F-15 Lead pilot at trial and during Article 32 investigation.

[375] An interesting issue is whether the pilots could have disregarded the mission and not shot. Would it be dereliction of duty not to shoot? One scholar suggests that officers who refuse to fight based on ideological, religious, or moral reasons betray the nations trust. *See* Paul Christopher, *Unjust war and Moral Obligation: What Should Officers Do?*, PARAMETERS, Vol. XXV, No. 3, pp. 4-8.

[376] *Supra* note 1.

unknown civil aircraft and unarmed military aircraft. Finally, we should consider our rules of engagement for their overall integration with and effect on the political, military, and legal aspects of our operations other than war.

A. Lesson 1--Status Based ROE are Inappropriate for Most Expeditionary Operations

One should consider whether status-based rule contribute to fratricide and whether these rules may violate the spirit if not the letter of the law of armed conflict during operations other than war. What do status-based rules do to the operational mindset of fighter pilots? During war, status-based rules of engagement allow combatants to engage and destroy enemy targets on site anywhere outside of neutral territory in compliance with the rules' identification procedures. Assuming an air to air engagement between opposing military aircraft, no additional analysis of necessity or proportionality is required during aerial combat under status-based rules. The idea is to engage the enemy quickly and lethally before he similarly engages you. Perhaps a military necessity analysis should also take place before resorting to status-based rules for engaging unarmed aircraft, helicopters or other slow-moving aircraft in no-fly zones.

1. Status-based ROE may contribute to fratricide.

DOD aircraft accident investigators found Operation PROVIDE COMFORT personnel lacked "consistent, comprehensive training to ensure they had a thorough understanding of

the USEUCOM-directed ROE."[377] As a remedial measure, the EUCOM commander, "directed a comprehensive review of the Rules of Engagement (ROE) for appropriateness relative to the mission."[378] Investigators also discovered OPC "aircrews' understanding of how the approved ROE should be applied, became over-simplified."[379]

History reveals fratricide as a tragic consequence of warfare over the past two centuries.[380] Aviation shares in this inglorious tradition. On July 25, 1944, Eighth Air Force bombs falling short of their mark caused 600 American casualties, including the death of Lieutenant General Lesley J. McNair, at St. Lo, Normandy.[381] History also demonstrates that fratricide occurs nearly equally across the spectrum of military operations.[382] Accordingly, these

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[377] *Id.*

[378] *Supra* note 3.

[379] Accident Investigation, *supra* note 1, at Executive Summary 4.

[380] *See* COL Johnson, *Legal Issues in Investigating Friendly Fire Incidents* (AF/JAI Bullet Background Paper, 10 Oct 96), *reprinted in* 1996 USAFE STAFF JUDGE ADVOCATE CONFERENCE MATERIALS, at 105 (Copy in possession of author). COL Johnson recalls two notable deaths from two centuries: the death of General Thomas "Stonewall" Jackson mistakenly shot on May 2, 1863, by his own troops while on reconnaissance at Chancellorsville, Virginia, during the US Civil War; and, the death of General Leslie J. McNair by allied bombing at Normandy, France, during World War II. *Id.* For an account of General Jackson's death, *see* EMORY M. THOMAS, THE AMERICAN WAR AND PEACE: 1860—1877, at 140-41 (1973); *see also* JAMES M. MCPHERSON, ORDEAL BY FIRE -THE CIVIL WAR AND RECONSTRUCTION 321-323 (1982).

[381] 2 DICTIONARY OF AMERICAN MILITARY BIOGRAPHY 697 (Roger J. Spiller & Joseph G. Dawson III eds., 1984).

[382] COL Kenneth K. Steinweg, *Dealing Realistically With Fratricide*, Vol. XXV No. 1 PARAMETERS 4-29 (Spring 1995). COL Steinweg uses the US Army Training and Doctrine Command (TRADOC) definition for fratricide: "Fratricide is the employment of friendly weapons and munitions with the intent to kill the enemy or destroy his equipment or facilities, which results in unforeseen and unintentional death or injury to friendly personnel." *Id.* at 5. Applying the TRADOC definition, COL Steinweg calculates US fratricide rates during the 20th century "have been, conservatively, ten to 15 percent of our casualties, not two percent" *Id.* at 26. The two percent figure stems from articles published by LTC Charles R. Shrader, *see Id.* at notes 2 and 3. Citing Charles Hawkins research in Vietnam during 1970, COL Steinweg found a similar US fratricide rate of 14 percent for "low- and mid-intensity combat." *Id.* at 13 and at note 30.

"friendly fire" deaths or injuries are studied in an effort to prevent or reduce their occurrence. Most remedies focus on technological improvements in identification systems, still fratricide continues to occur at the same rates in spite of these advances.[383] One explanation for the continued fratricide rate is the human factor. As one author puts it, "(o)ne of the potentially weak links on the battlefield is the Army's most sophisticated system, the soldier."[384]

The individual soldier, sailor, airman, or marine must function in the fog and friction of a modern technological battlefield. The ability of modern weapons to rapidly deliver a lethal blow, at longer ranges, day or night, increases the need to quickly, decisively, and correctly engage the enemy.

Do expeditionary operations, by their nature, affect the risk of fratricide? Recall that fratricide occurs at equal rates along the spectrum of conflict.[385] Accordingly, actions including training, ROE, and technical solutions taken to prevent fratricide during combat operations should also work during MOOTW. Indeed, research shows that "measures taken to avoid fratricide in peace operations are no different than those taken during combat operations."[386] US joint doctrine notes that during expeditionary operations, such as peace

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[383] In fact, COL Steinweg determined the US Desert Storm fratricide rate was 17%. *Id.* at 18-19 ("Of the 613 US military battle casualties in Operation Desert Storm (sic), 146 were killed in action, including 35 (24 percent) killed by friendly fire. Of the 467 wounded, 72 (15 percent) were by fire from friendly weapons, for an overall average of 17 percent. *Id.* at 18.

[384] *Id.* at 20.

[385] *Supra* note 191.

[386] FM 100-23, *supra* note 8, at 37.

operations, "ROE might prevent the use of some weapon systems and lessen the risk of fratricide."[387]

The mindset created by status-based ROE presents the greatest human factor to increase the risk of fratricide. A self-fulfilling prophecy occurs. Fielded forces engaged in combat expect to see an enemy and disengage in critical analysis. The target expected is what the target becomes. This "combat orientation"[388] contributes to fratricide and other mistakes based on an incomplete awareness of the situation on the ground and in the air. This "situational awareness" is essential to effective airmanship. Lack of situational awareness creates opportunity for mistakes and misjudgment.

2. Status Based Rules Of Engagement May Violate Customary Law of Armed Conflict

Rules of engagement that automatically engage slow moving, unarmed military aircraft that are not engaged in hostile acts or evidencing hostile intent are circumspect. When overwhelmingly powerful and technically superior weapon systems engage those same helicopters, it compares to a sole tank firing at a lone cavalry trooper on a horse. Yes they are matched numerically, however, where is the military necessity? Additional concern exists when the suspect helicopter or airplane poses no threatening or hostile act or intention towards the no-fly zone's protected population.

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[387] *Id.*

[388] Taw & Vick, *supra* note 9, at 209, n. 33.

Domestic and international law demand compliance with the law of armed conflict. Understanding the nature of rules of engagement does not guarantee compliance with the law of armed conflict, or attainment of political or mission goals. But understanding the nature of ROE gives one a framework and methodology for commanders to reduce the risks in missions that "creep"— evolving and becoming increasingly political along the continuum of military operations. Rules of engagement foster compliance with the law of armed conflict while achieving political and military aims. Accordingly, the rules must be tailored to the mission's specific political, military, and legal aims. Rules of engagement based solely on political aims pose a great risk to the mission and to our fielded forces.[389]

B. Lesson 2—Forces may Lawfully Use Status Based Rule of Engagement During Combat

This paper maintains that not only is it lawful to go to status-based rules during actual hostilities; but, in fact, US forces should use status-based rules at those times. What should be done is a regular review of threat conditions, including hostile acts and hostile intent. Once a force is declared hostile, the JFACC should integrate this into the daily targeting cycle and mission briefing process.

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[389] Maj Lee E. DeRemer, *Leadership Between a Rock and a Hard Place: ROE,* VOL X No. 3 AIRPOWER JOURNAL 87 (Fall 1996).

C. Lesson 3-- Synchronization/Integration is a Required Planning Principle.

Properly integrated rules of engagement promote discipline and encourage respect for the law of armed conflict while reducing risks.[390] Successful integration depends on the how well policy-makers, military leaders, and military lawyers understand the nature of the rules of engagement. Applying synchronization involves more than the military dimension of operations.[391] As one author suggests, during operations other than war, synchronization produces "maximum relative power at a decisive place and time through the arrangement of military, civil, and political actions in time, space, and purpose."[392]

Final success depends on how well commanders direct their staff in rules of engagement processes. Good rules of engagement do not guarantee success. History teaches that legally sufficient rules of engagement may not succeed politically or militarily. Perhaps the best example comes from air campaigns in Vietnam.[393] The Vietnam conflict produced ROE that often required White House approval before engaging a target. The result was an unecessary

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[390] *See* FM 100-5, *supra* note 25, at 2-3 ("Disciplined Operations. ... The Army operates with applicable rules of engagement (ROE), conducting warfare in compliance with international laws and within the conditions specified by the higher commander."); *id.* at 13-4 ("The actions of soldiers and units are framed by the disciplined application of force, including specific ROE. In operations other than war, these ROE will be more restrictive, detailed, and sensitive to political concerns than in war.").

[391] Shanahan, *supra* note 11, at 12.

[392] *Id.*

[393] *See generally* W. Hays Parks, "Rolling Thunder and the Law of War," 34 AIR UNIVERSITY REVIEW __ (19__).

limit on the use of force that crippled the air arms ability to defend itself and ground forces, or to take the initiative against the enemy.

This paper's previous examination of rules of engagement's nature, resulting doctrine, and processes demonstrates how joint force commanders should organize their staffs to execute the commanders' rules of engagement responsibility. Emphasis is placed on proper command ownership of the rules, J-3 ownership of rule of engagement staffing processes, and the JAG support role to both commanders and staff planners. The aim is to integrate responsibility for rules of engagement processes.

Integrated responsibility for rules of engagement process, owned by the joint forces commander, is the key to LOAC compliance and to reducing the risk of rules of engagement connected tragedies. Successful integration depends on two factors: first, how effectively a balance is maintained between the policy-makers, military leaders, and military lawyers over strategic rules of engagement doctrine; and second, how well joint commanders organize a rules of engagement team to execute the tactical rules of engagement process. One scholar precisely noted this lesson:

> Command and control (C2) is likely to be one of the most difficult aspects of any multinational operation. The shoot-down of two US Army UH-60s by two US Air Force F-15s over northern Iraq in 1994, resulting in the loss of 26 lives is a sobering reminder of the tragic consequences of failing to coordinate and communicate in a peace-enforcement operation. A military effort involving several nations and much less restrictive rules of engagement increases the chance of such mistakes.[394]

When it comes to integration, SROE have the separate services singing off the same sheet of music, albeit for different purposes and not always mindful of what is going on around us. But at least we have a common point of departure. American forces, especially in joint and combined operations still lack "situational awareness" of ROE impacts to sister services and coalition partners.

D. A Proposed Air Law Solution—The Chicago Convention's Article 3 bis

The Chicago Convention article 3bis provides detailed procedures for intercepting civil aircraft that intrude sovereign airspace. This is a detailed procedure, including phases for the approach, standard visual signals and language for conducting safe visual identification and interception of aircraft. One reasons that the military no-fly zones could establish these same procedures for unarmed military aircraft, particularly helicopters or fixed-wing propeller engine aircraft as well as intruding civil aircraft.

E. Additional Lessons Learned

Other rules of engagement lessons learned from the Black Hawk shoot-down exist for US forces. This paper recognized but did not delve into the following lessons about ROE:

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[394] James S. Corum, *Airpower and Peace Enforcement,* VOL X No. 4 AIRPOWER JOURNAL 15 (Winter 1996).

declassification,[395] education, the need for "ownership" of rules of engagement; the need to integrate or coordinate rules of engagement laterally, horizontally, and vertically; the need to train operators, JAGs, and politicians; the need to regularly review rules of engagement for mission, legal, and political purposes; and, the need for centralized control and decentralized execution of rules of engagement.

Current issues show we understand the contribution rules of engagement make to the compliance with the law of armed conflict, but fail to fully understand the political and military nature of rules of engagement, and fail to integrate our processes among services. Increased joint operations, increased political aspects of military operations, particularly the migration of law of armed conflict principles into operations other than war, will force rules of engagement issues on commanders. To promote mission success, rules of engagement must be doctrinally based, mission tailored, and integrated among forces and objectives.

As this paper developed its main purposes, common themes developed. One theme is the importance of proper command and staff responsibility for rules of engagement, the proper role of military lawyers. A review of ROE doctrine reveals that each service implements rules of engagement for its own purpose--achieving air, land, or maritime superiority, while complying with the law of armed conflict. Each service mirrors the failures of their sisters—JAGs are left holding the rules of engagement bag. This scheme of JAG ownership may

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[395]*See* Colonel F. M. Lorenz, *Rules of Engagement in Somalia: Were They Effective?*, 42 NAVAL L. REV 62, at 76 (1995)(COL Lorenz maintains that in MOOTW, "ROE need to be promptly declassified" *Id.*).

work out fine. When the resulting rules of engagement process accomplishes the necessary command-staff integration, cross-communication and interoperability checks of rules of engagement with policy makers, military leadership, and JTF/CTF forces, all is well that ends well.[396] On the other hand, leaving JAGs in charge of rules of engagement that lack effective integration, communication, and interoperability processes often results in tragic failures involving fratricide,[397] mission paralysis,[398] and war crimes.[399]

Proper ownership of rules of engagement processes is essential to reducing risks and maintaining accountability. Command emphasis and staff integration between the J-3 and the JAG are paramount to effective rules of engagement training and application. Finally, we should ensure rules of engagement adjust in time to meet missions changed by fluctuating national policy objectives. This adjustment should be command-driven and staff-executed. Rules of engagement doctrine and resulting processes, founded on a proper understanding of rules of engagement ROE nature and the corresponding roles and missions of operational components, should reduce risks associated with rules of engagement.

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[396] As in Desert Storm. *See, Final Report to Congress, Conduct of the Persian Gulf War*, April 1992, Appendix O, page 607; Lt Col John G. Humphries, *Operations Law and the Rules of Engagement in Operation Desert Shield and Desert Storm*, AIRPOWER JOURNAL 25 (Fall 1992).

[397] 14 April 1994 Black Hawk Fratricide. *See generally,* Eflein, *supra* note 326.

[398] Parks, *supra* note 393.

[399] My Lai as discussed by MAJ H. Wayne Elliot, "Theory and Practice: Some Suggestions for the Law of War Trainer," *The Army Lawyer*, July 1983, p.1.

Realistic solutions require a fundamental understanding of both the three-faceted nature of rules of engagement, and the interdisciplinary roles and missions of those responsible for rules of engagement. Joint and service rules of engagement methodology should develop, train, apply, and review rules of engagement in light of these fundamentals. The method of rules of engagement development should cross-check the rules for compliance with political, legal, and mission objectives both across force components, and within organizational hierarchy.

VIII. CONCLUSION

This thesis evaluated the propriety of using status-based rules of engagement while enforcing a no fly zone as military operations other than war. The UN, or other international bodies of which the United States is a member usually sanction no-fly zones. However, the United States may also impose a no-fly zone unilaterally where lawful justification exists. These aerial exclusion zones are usually imposed because of breaches of international standards of human rights or flagrant abuse of international law by the target-state. Situations that may warrant such action include: one, the persecution of the civil population by a government; or two, the attempt by a hostile nation to acquire territory by force.[400]

The legal regime governing no-fly zones is based on a synthesis of DOD policy to apply law by analogy, customary international law of armed conflict, and operational context of the

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[400] JOINT PUB 3-07, *supra* note 9.

specific no-fly zone mission. Pilots must apply force based on a military necessity, in a discriminating, proportional manner. Pilots never lose their right to unit, collective, and national self-defense under any specific operational rules of engagement.

Operation PROVIDE COMFORT's No-Fly Zone's Black Hawk fratricide incident demanded scrutiny of the propriety of status based rules of engagement. This thesis maintains that status-based rules of engagement are not appropriate for no-fly zone operations. Significantly, status-based rules of engagement may increase the risk of fratricide, as seen by the Black Hawk shoot-down. Moreover, status-based ROE may violate the international law of armed conflict by failure to meet customary LOAC standards of military necessity and discrimination, and the exclusion zone custom of warning before shooting. Solutions include limiting status based rules of engagement to instances of actual combat operations and applying ICAO Air Interception procedures for civil aircraft to Humanitarian No-Fly Zone operations.

In reviewing the Black Hawk fratricide Accident Investigation, Secretary of Defense William J. Perry concluded, "it is clear that this tragedy did not have to happen." "We must do all that we can to prevent such a tragedy from happening again, there or anywhere else."[401] As Secretary Perry suggested, political leaders, commanders, and military operations lawyers can all learn from this tragic incident. When learned and applied, the Black Hawk fratricide's lessons reduce the risks of status based rules of engagement during future contingency

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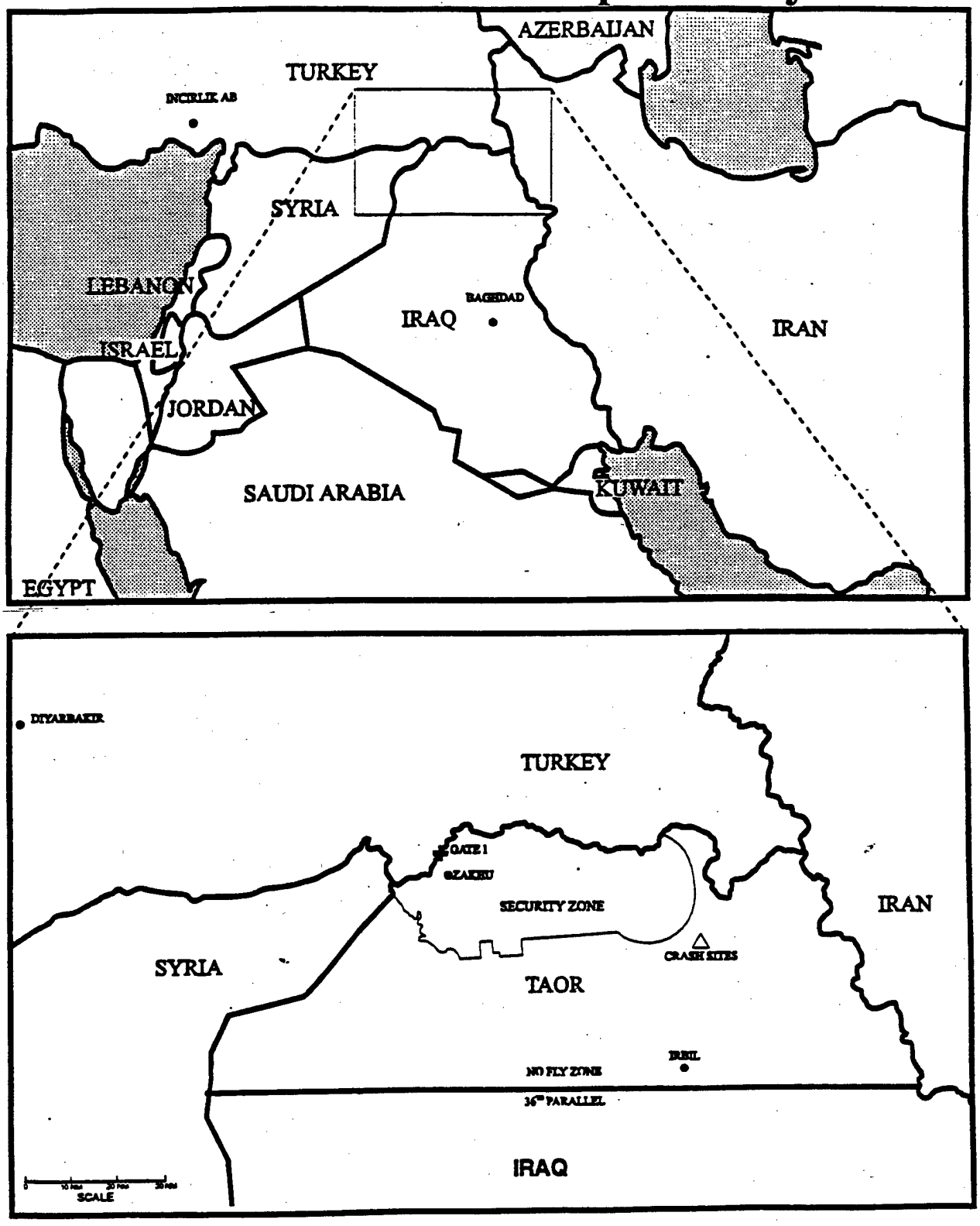
[401] *Supra* note 364.

operations. Status based rules are appropriate at times for operations other than war, though they require a constant review and a heightened awareness on the pilots enforcing the no-fly zone. If the Black Hawk incidents tragic lessons are learned, the deaths of twenty-six soldiers and airmen on 14 April 1994 will not have been in vain.

OPERATION PROVIDE COMFORT

Tactical Area of Responsibility

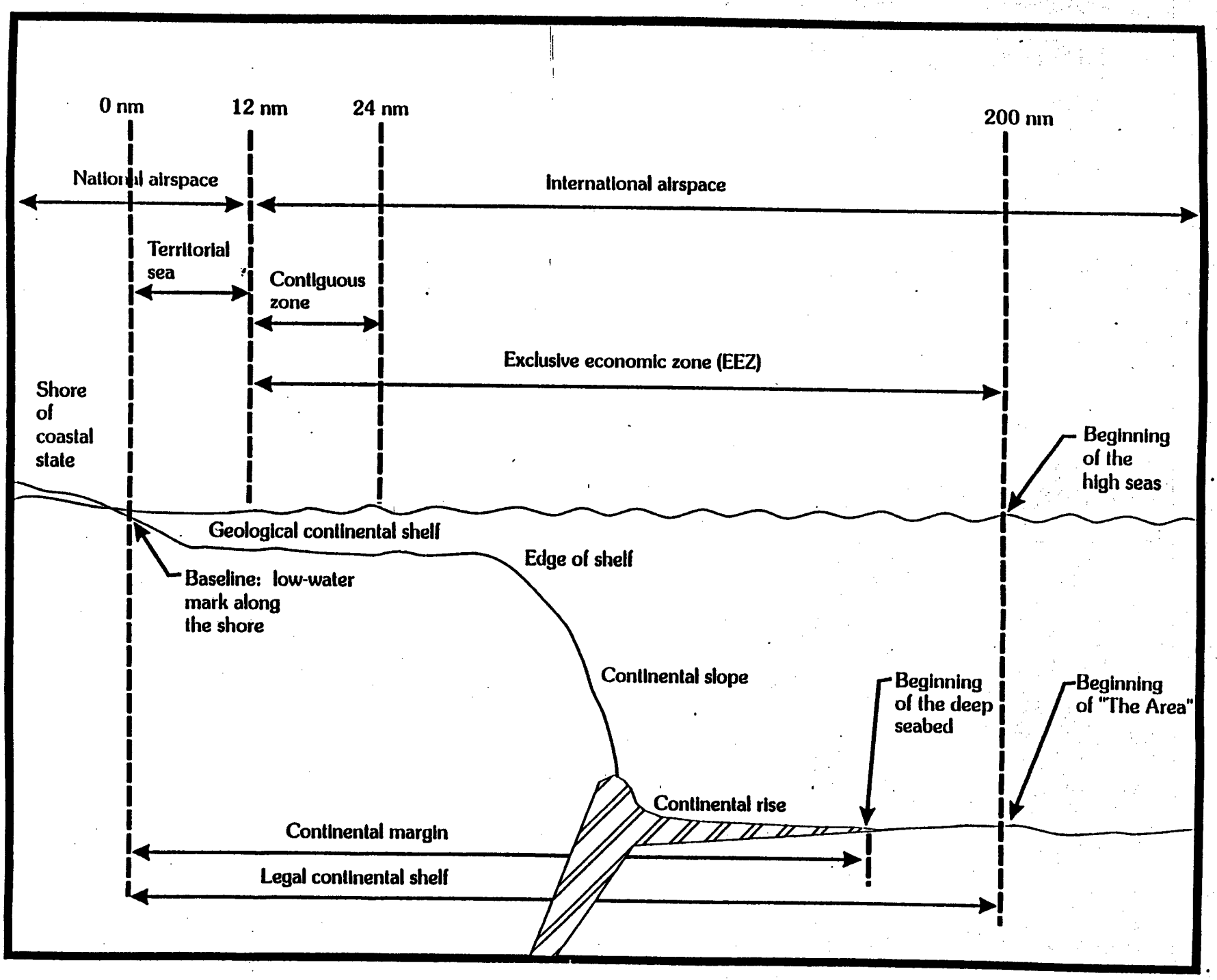


Time Line with ACE ("Duke") Actions Included

Time (Z)	AWACS ("Cougar")	ACE ("Duke")	F-15s ("Tiger")	Black Hawks ("Eagle")
0436	AWACS departs Incirlik AB, Turkey	ACE departs on-board the E-3 with ATO that identifies the standard "Eagle Flights, "As Required", the system had not passed words of an Out-of-Security Zone mission		
0522				Black Hawks Depart Diyarkabir, Turkey
0545	AWACS delcares "On Station" and Surveillaance section begins tracking aircraft			
0616	"H" character programmed to apppear on the Senior Director's (SD) radar scope whenever Eagle Flight's IFF Mode I, Code 42 is detected			
0621	AWACS answers Black Hawks Track annotated "EE01" for Eagle Flight	Black Hawks do not check in with the "Duke" as required by ACO for "Words"		Black Hawks call AWACS on the enroute frequency at the "Gate" (entrance to TAOR)
0624	Black Hawks' radar and IFF returns fade			No position report passed to AWACS for landing at Zakhu
0627		OPC first package (26 aircraft) begins to launch		
0635			F-15s depart Incirlik AB, Turkey	
0636	Enroute controller interrogates F-15s' IFF Mode IV			
0654	AWACS receives Black Hawks' radio call Enroute controller reiniates "EE01" symbology to resume tracking	Black Hawk position report and route of flight is not passed to the "Duke"		Black Hawks call AWACS to report enroute from "Whisky" (Zakhu) to "Lima" (Irbil)
0655	"H" begins to be regularly displayed on SD's radar scope (IFF Mode I, Code 42)			
0705			F-15s check in with AWACS on enroute frequency	
0711	"H" ceases to be displayed on SD's radar scope			
0712	Black Hawks' radar and IFF contacts fade; computer sysmbolgy continues to move at last known speed and direction	*Duke assumes that Eagle Flight landed, multiple landing sites in the vicinity of track fading; mission "As Required"(see map, Section 1 Tab G)		Black Hawks enter mountainous terrain

Time Line with ACE ("Duke") Actions Included, Continued				
Time (Z)	AWACS ("Cougar")	ACE ("Duke")	F-15s ("Tiger")	Black Hawks ("Eagle")
0713	ASO places arrow on SD scope to identify that weapons symbology is no longer associated with track sensor data			
0715		ACE replies to F-15s "... negative words", nothing out of the ordinary has taken place to impact the F-15s	F-15s check in with the ACE	
0715	AWACS radar adjusted to low-velocity detection settings			
0720			F-15s enter TAOR and call AWACS at Gate on TAOR radio frequency	
0721	"EE01" (black Hawk symbolgy dropped by AWACS			
0722	TAOR WD responds "Clean there"		F-15 lead reports radar contact at 40NMs	
0723	Intermittent IFF response appears in vicinity of F-15's reported radar contact	Crew locates unknown contact; Duke expects and allows ID to continue		
0724	"H" symbol reappears on SD's scope			
0725	Black Hawk IFF responses becomes more frequent TAOR controller responds to F-15s with "Hits there"	Duke permits VID to continue IAW the published ROE	F-15 lead "Visual" with a helicopter at 5NM	
*0728	AWACS replies "Copy Hinds"		F-15 lead conducts VID pass and calls "...Tally 2 Hinds..."	
*0728.30			F-15 wingman conducts VID pass; calls "Tally 2"	
*0729		Duke can not hear internal F-15 flight communication	F-15 lead instructs No 2 to "Arm hot" and gives instruction for independent targeting	
0730		Duke also monitoring the sequencing for first air refueling in ROZ 02		
*0730			F-15 lead fires AIM 120 at trail helicopter	Trail Black Hawk hit by missile
*0730			F-15 wingman fires AIM 9 at lead helicopter	Lead Black Hawk hit by missile
*0730+			F-15 lead reports "Splash 2 Hinds"	

Note: All times preceded by a "*" are estimates based on the best available information. Local time at Diyarbakir is 3 hours later than Zulu time; and local time at Zakhu is hours later than Zulu time.


0 nm
12 nm
24 nm
200 nm
National airspace
International airspace
Territorial sea
Contiguous zone
Exclusive economic zone (EEZ)
Shore of coastal state
Beginning of the high seas
Geological continental shelf
Edge of shelf
Baseline: low-water mark along the shore
Continental slope
Beginning of the deep seabed
Beginning of "The Area"
Continental rise
Continental margin
Legal continental shelf

Article 3bis

(a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.

(c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by a person having his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations.

(d) Each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention. This provision shall not affect paragraph (a) or derogate from paragraphs (b) and (c) of this Article.

Appendix 2: INTERCEPTION OF CIVIL AIRCRAFT

1. Principles to be observed by States

1.1 To achieve the uniformity in regulations which is necessary for the safety of navigation of civil aircraft due regard shall be had by Contracting States to the following principles when developing regulations and administrative directives:

a) interception of civil aircraft will be undertaken only as a last resort;

b) if undertaken, an interception will be limited to determining the identity of the aircraft, unless it is necessary to return the aircraft to its planned track, direct it beyond the boundaries of national airspace, guide it away from a prohibited, restricted or danger area or instruct it to effect a landing at a designated aerodrome;

c) practice interception of civil aircraft will not be undertaken;

d) navigational guidance and related information will be given to an intercepted aircraft by radiotelephony, whenever radio contact can be established; and

e) in the case where an intercepted civil aircraft is required to land in the territory overflown, the aerodrome designated for the landing is to be suitable for the safe landing of the aircraft type concerned.

ATTACHMENT A. INTERCEPTION OF CIVIL AIRCRAFT

1. In accordance with Article 3 d) of the Convention on International Civil Aviation the Contracting States of ICAO "undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft". As interceptions of civil aircraft are, in all cases, potentially hazardous, the Council of ICAO has formulated the following special recommendations which Contracting States are urged to implement through appropriate regulatory and administrative action. The uniform application by all concerned is considered essential in the interest of safety of civil aircraft and their occupants.

2. General

2.1 Interception of civil aircraft should be avoided and should be undertaken only as a last resort. If undertaken the interception should be limited to determining the identity of the aircraft, unless it is necessary to return the aircraft to its planned track, direct it beyond the boundaries of national airspace, guide it away from a prohibited, restricted or danger area or instruct it to effect a landing at a designated aerodrome. Practice interception of civil aircraft is not to be undertaken.

3. Interception manoeuvres

3.1 A standard method should be established for the manoeuvering of aircraft intercepting a civil aircraft in order to avoid any hazard for the intercepted aircraft. Such method should take due account of the performance limitations of civil aircraft, the need to avoid flying in such proximity to the intercepted aircraft that a collision hazard may be created and the need to avoid crossing the aircraft's flight path or to perform any other manoeuvre in such a manner that the wake turbulence may be hazardous, particularly if the intercepted aircraft is a light aircraft.

3.2 Manoeuvres for visual identification
The following method is recommended for the manoeuvering of intercepting aircraft for the purpose of visually identifying a civil aircraft:

Phase I

The intercepting aircraft should approach the intercepted aircraft from astern. The element leader, or the single intercepting aircraft, should normally take up

a position on the left (port) side, slightly above and ahead of the intercepted aircraft, within the field of view of the pilot of the intercepted aircraft, and initially not closer to the aircraft than 300 m. Any other participating aircraft should stay well clear of the intercepted aircraft, preferably above and behind. After speed and position have been established, the aircraft should, if necessary, proceed with Phase II of the procedures.

Phase II

The element leader, or the single intercepting aircraft, should begin closing in gently on the intercepted aircraft, at the same level, until no closer than absolutely necessary to obtain the information needed. The element leader, or the single intercepting aircraft, should use caution to avoid startling the flight crew or the passengers of the intercepted aircraft, keeping constantly in mind the fact that manoeuvres considered normal to an intercepting aircraft may be considered hazardous to passengers and crews of civil aircraft. Any other participating aircraft should continue to stay well clear of the intercepted aircraft. Upon completion of identification, the intercepting aircraft should withdraw from the vicinity of the intercepted aircraft as outlined in Phase III.

Phase III

The element leader, or the single intercepting aircraft, should break gently away from the intercepted aircraft in a shallow dive. Any other participating aircraft should stay well clear of the intercepted aircraft and rejoin their leader.

3.3 Manoeuvres for navigational guidance

3.3.1 If, following the identification manoeuvres in Phase I and Phase II above, it is considered necessary to intervene in the navigation of the intercepted aircraft, the element leader, or the single intercepting aircraft, should normally take up a position on the left (port) side, slightly above and ahead of the intercepted aircraft, to enable the pilot-in-command of the latter aircraft to see the visual signals given.

3.3.2 It is indispensable that the pilot-in-command of the intercepting aircraft be satisfied that the pilot-in-command of the intercepted aircraft is aware of the interception and acknowledges the signals given. If repeated attempts to attract the attention of the pilot -in-command of the intercepted aircraft by use of the Series 1 signal in Appendix 1, Section 2 are unsuccessful, other methods of signaling may be used for this purpose, including as a last resort the visual effect of the reheat/afterburner, provided that no hazard is created for the intercepted aircraft.

3.4 It is recognized that meteorological conditions or terrain may occasionally make it necessary for the element leader, or the single intercepting aircraft, to take up a position on the right (starboard) side, slightly above and ahead of the intercepted aircraft. In such case, the pilot-in-command of the intercepting aircraft must take particular care that the intercepting aircraft is clearly visible at all times to the pilot-in-command of the intercepted aircraft.

4. Guidance of an intercepted aircraft

4.1 Navigational guidance and related information should be given to an intercepted aircraft by radiotelephony, whenever radio contact can be established.

4.2 When navigational guidance is given to an intercepted aircraft, care must be taken that the aircraft is not led into conditions where the visibility may be reduced below that required to maintain flight in visual meteorological conditions and that the manoeuvres demanded of the intercepted aircraft do not add to already existing hazards in the event that the operating efficiency of the aircraft is impaired.

4.3 In the exceptional case where an intercepted civil aircraft is required to land in the territory overflown, care must also be taken that:

a) the designated aerodrome is suitable for the safe landing of the aircraft type concerned, especially if the aerodrome is not normally used for civil air transport operations;

b) the surrounding terrain is suitable for circling, approach and missed approach manoeuvres;

c) the intercepted aircraft has sufficient fuel remaining to reach the aerodrome;

d) if the intercepted aircraft is a civil transport aircraft, the designated aerodrome has a runway with a length equivalent to at least 2, 500 m at mean sea level and a bearing strength sufficient to support the aircraft; and

e) whenever possible, the designated aerodrome is one that is described in detail in the relevant aeronautical information publication.

4.4 When requiring a civil aircraft to land at an unfamiliar aerodrome, it is essential that sufficient time be allowed it to prepare for a landing, bearing in mind that only the pilot-in-command of the civil aircraft can judge the safety of the landing operation in relation to runway length and aircraft mass at the time.

4.5 It is particularly important that all information necessary to facilitate a safe approach and landing be given to the intercepted aircraft by radiotelephony.

5. Actions by intercepted aircraft

The standards in Appendix 2, Section 2 specify as follows:

2.1 An aircraft which is intercepted by another aircraft shall immediately:

a) follow the instructions given by the intercepting aircraft, interpreting and responding to visual signals in accordance with the specifications in Appendix 1;

b) notify, if possible, the appropriate air traffic services unit;

c) attempt to establish radiocommunication with the intercepting aircraft or with the appropriate intercept control unit, by making a general call on the emergency frequency 121.5 MHz, giving the identity of the intercepted aircraft and the nature of the flight; and if no contact has been established and if practicable, repeating this call on the emergency frequency 243 Mhz;

d) if equipped with SSR transponder, select Mode A, Code 7700, unless otherwise instructed by the appropriate air traffic services unit.

2.2 If any instructions received by radio from any sources conflict with those given by the intercepting aircraft by visual signals, the intercepted aircraft shall request immediate clarification while continuing to comply with the visual instructions given by the intercepting aircraft.

2.3 If any instructions received by radio from any sources conflict with those given by the intercepting aircraft by radio, the intercepted aircraft shall request immediate clarification while continuing to comply with the radio instructions given by the intercepting aircraft."

6. Air-to air visual signals

The visual signals to be used by intercepting and intercepted aircraft are those set forth in Appendix 1 to this Annex. It is essential that intercepting and intercepted aircraft adhere strictly to those signals and interpret correctly the signals given by the other aircraft, and that the intercepting aircraft pay particular attention to any signals given by the intercepted aircraft to indicate that it is in a state of distress or urgency.

7. Radiocommunication between the intercept control unit or the intercepting aircraft and the intercepted aircraft

7.1 When an interception is being made, the intercept control unit and the intercepting aircraft should:

a) first attempt to establish two-way communication with the intercepted aircraft in a common language on emergency frequency 121.5 Mhz, using the call signs "INTERCEPT CONTROL", "INTERCEPTOR (call sign)" and "INTERCEPTED AIRCRAFT" respectively; and

b) failing this, attempt to establish two-way communication with the intercepted aircraft on such other frequency or frequencies as may have been prescribed by the appropriate ATS authority, or to establish contact through the appropriate ATS unit(s).

7.2 If radio contact is established during interception but communication in a common language is not possible, attempts must be made to convey instructions, acknowledgement of instructions and essential information by using the phrases and pronunciations in Table A-1 and transmitting each phrase twice.

8. Refraining from the use of weapons

Note.-- In the unanimous adoption by the 25th Session (Extraordinary) of the ICAO Assembly on 10 May 1984 of Article 3 bis *to the Convention on International Civil Aviation, the Contracting States have recognized that "every State must refrain from resorting to the use of weapons against civil aircraft in flight."*

The use of tracer bullets to attract attention is hazardous, and it is expected that measures will be taken to avoid their use so that the lives of persons on board and the safety of aircraft will not be endangered.

STATES WHICH HAVE RATIFIED THE PROTOCOL RELATING TO AN AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

ARTICLE 3 *bis*, SIGNED AT MONTREAL ON 10 MAY 1984*

(Status as of 26 March 1998)

Barbados	23 November 1984
Chile	26 November 1984
Austria	11 January 1985
Oman	21 February 1985
Republic of Korea	27 February 1985
Tunisia	29 April 1985
Senegal	2 May 1985
Luxembourg	10 May 1985
Ethiopia	22 May 1985
Pakistan	10 June 1985
South Africa	28 June 1985
Togo	5 July 1985
Nigeria	8 July 1985
Thailand	12 July 1985
Egypt	1 August 1985
Seychelles	8 August 1985
France	19 August 1985
Belgium	20 September 1985
Denmark	16 October 1985
Norway	16 October 1985
Sweden	16 October 1985
Spain	24 October 1985
Switzerland	24 February 1986
Bangladesh	3 June 1986
Italy	12 June 1986
Kuwait	18 July 1986
Saudi Arabia	21 July 1986
Australia	10 September 1986
Madagascar	10 September 1986
Canada	23 September 1986
Jordan	8 October 1986
Argentina	1 December 198
Netherlands, Kingdom of the	18 December 1986
Brazil	21 January 1987
United Arab Emirates	18 February 1987
Mali	4 March 1987
Panama	22 May 1987
Côte d'Ivoire	5 June 1987
United Kingdom	21 August 1987
Uruguay	11 September 1987
Guatemala	18 September 1987
Greece	16 October 1987
Nepal	26 October 1987
Cameroon	28 January 1988
Israel	30 September 1997
Lesotho	17 March 1988
Niger	8 April 1988
Ecuador	22 April 1988
Guyana	2 May 1988
Antigua and Barbuda	17 October 1988
Gabon	1 November 1988
Colombia	10 March 1989
Cyprus	5 July 1989
Mauritius	7 November 1989
Bahrain	7 February 1990
Hungary	24 May 1990
Mexico	20 June 1990
Morocco	19 July 1990
Russian Federation	24 August 1990
Ireland	19 September 1990
Qatar	23 October 1990
Malawi	13 December 1990
Portugal	17 June 1991
Burundi	10 October 1991
Finland	18 December 1991
Estonia	21 August 1992
Fiji	21 September 1992
Papua New Guinea	5 October 1992
Monaco	27 January 1993
Turkmenistan	14 April 1993
Czech Republic	15 April 1993
Uzbekistan	24 February 1994
Malta	25 March 1994
Croatia	6 May 1994
Eritrea	27 May 1994
Iran, Islamic Republic of	17 June 1994
Lebanon	14 December 1994
San Marino	3 February 1995
Slovakia	20 March 1995
Uganda	7 July 1995
Kenya	5 October 1995
Germany	2 July 1996
Belarus	24 July 1996
Libyan Arab Jamahiriya	28 October 1996
Maldives	8 April 1997
Bosnia and Herzegovina	9 May 1997
Republic of Moldova	20 June 1997
Ghana	15 July 1997
China	23 July 1997
Belize	24 September 1997
Iraq	20 March 1998

* In accordance with paragraph 4 d), the Protocol shall come into force on the date of deposit of the one hundred and second instrument of ratification.

Article 3 *bis*
10 May 1984

The former Yugoslav Republic of Macedonia	23 March 1998

03/30/98 18:05:48

12GGNDP3TC
MRU958 301805 RC=00
GG KDZZNAXX
301805 KDZZNAXX
)SVC RQ I L.KFDC NT.A0050/96

161348 KFDC
(A0050/96 NOTAMN A) KFDC PART 1 OF 2 B) WIE C) UFN
E) Special Federal Aviation Regulation No. 77---Prohibition Against Certain Flights Within the Territory and Airspace of Iraq.
This rule applies to all U.S. air carriers or commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S. registered aircraft for a foreign air carrier, or all operators of aircraft registered in the
United States except where the operator of such aircraft is a foreign carrier.
Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations over or within the territory and airspace of Iraq. This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations over or within the territory and airspace of Iraq where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government.
END PART 1 OF 2)

161348 KFDC
(A0050/96 NOTAMN A) KFDC PART 2 OF 2 B) WIE C) UFN
E) Special Federal Aviation Regulation No. 77---Prohibition Against Certain Flights Within the Territory and Airspace of Iraq.
In an emergency that requires immediate decision and action for safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers or commercial operators that are subject to the requirements of 14 CFR parts 119, 121, or 135, each person who

deviates from this rule shall, within ten (10) days of the deviation,

excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefore.
This Special Federal Aviation Regulation (SFAR) will remain in effect until further notice.
END PART 2 OF 2)

NOTAMS FOUND 2
00:00:12 ELAPSED TIME
END OF REPORT

03/30/98 18:06:32

12GGNDP3TC
MRU960 301805 RC=00
GG KDZZNAXX
301805 KDZZNAXX
)SVC RQ I L.KFDC NT.A0020/97

301338 KFDC
(A0020/97 NOTAMN
A) KFDC PART 1 OF 3 B) WIE C) UFN
E) THIS INFORMATION ORIGINATES FROM THE UNITED STATES (U.S.) AND IS PROMULGATED IN THE INTEREST OF SAFETY OF FLIGHT: FOLLOWING THE TERMINATION OF HOSTILITIES IN IRAQ, THE U.S., IN CONJUCTION WITH COALITION ALLIES, ESTABLISHED TWO NO-FLY ZONES (NFZ) OVER IRAQI TERRITORY TO ALLOW COALITION AIRCRAFT TO MONITOR AND REPORT ON IRAQI COMPLIANCE WITH UNITED NATIONS (UN) SECURITY COUNCIL RESOLUTIONS 687 AND 688. AS OF SEPTEMBER 3, 1996, THESE NFZ INCLUDE THE IRAQI TERRITORY AND AIRSPACE SOUTH OF 33 DEGREES NORTH LATITUDE AND IRAQI TERRITORY AND AIRSPACE NORTH OF 36 DEGREES NORTH LATITUDE. COALITION AIRCRAFT ROUTINELY OPERATE IN THESE AREAS TO ENFORCE THE NFZ PROCEDURES.
END PART 1 OF 3)

301338 KFDC
(A0020/97 NOTAMN
A) KFDC PART 2 OF 3 B) WIE C) UFN
E) STRICT ADHERENCE TO THESE PROCEDURES IS ESSENTIAL TO PRECLUDE THE INADVERTENT USE OF FORCE AGAINST ANY AIRCRAFT FLYING IN THE NFZ.

OPERATORS OTHER THAN COALITION MILITARY AND UN MARKED AIRCRAFT DESIRING TO ENTER THE NFZ MUST OBTAIN PRIOR MISSION APPROVAL THROUGH THEIR REQUESTING NATION FROM THE UN SANCTIONS COMMITTEE. FOLLOWING MISSION APPROVAL, THOSE MISSIONS PLANNED FOR SOUTH OF 33 DEGREES NORTH LATITUDE PROVIDE FLIGHT PLAN INFORMATION BELOW TO THE JOINT TASK FORCE SOUTHWEST ASIA (JTF-SWA). INFORMATION REQUESTED INCLUDES: DATE AND TIME OF FLIGHT, PURPOSE OF FLIGHT, TYPE AIRCRAFT, ROUTE SPECIFICS, DEPARTURE POINT, AND DESTINATION. CONTACT JTF-SWA DIRECTLY AT 966-1-478-1100, EXTENSION 435-7783, TO PROVIDE FLIGHT PLAN INFORMATION ABOVE. THOSE MISSIONS PLANNED FOR NORTH OF 36 DEGREES NORTH LATITUDE PROVIDE ABOVE STATED INFORMATION TO COMBINED TASK FORCE OPERATION NORTHERN WATCH (CTF-ONW). INFORMATION MAY BE PROVIDED BY MESSAGE TO "CTF OPERATION NORTHERN WATCH INCIRLIK AB TU" OR TELECON TO 90-322-316-3014.
END PART 2 OF 3)

301338 KFDC
(A0020/97 NOTAMN
A) KFDC PART 3 OF 3 B) WIE C) UFN
E) NON-COALITION, NON-UN AIRCRAFT OPERATING WITHIN THE NFZ WITHOUT BOTH UN SANCTION COMMITTEE APPROVAL AND DIRECT FLIGHT PLAN NOTICE TO JTF-SWA OR CTF-ONW WILL BE INTERCEPTED FOR A VISUAL IDENTIFICATION (VID). THOSE AIRCRAFT OPERATING IN THE NFZ WHICH DO NOT COMPLY WITH THE TRACK, IFF, AND COMMUNICATION PROCEDURES WILL ALSO BE INTERCEPTED FOR A VID.

ALL AIRCRAFT FLYING WITHIN THE NFZ SHOULD CONTINUOUSLY MONITOR GUARD EMERGENCY FREQUENCIES (VHF 121.5 AND/OR UHF 243.0 MHZ). AIRCRAFT EQUIPPED WITH A CIVIL TYPE RADAR TRANSPONDER SHOULD OPERATE IT CONTIUOUSLY WHEN TRANSITING THESE AREAS. UNIDENTIFIED AIRCRAFT AND AIRCRAFT WHOSE INTENTIONS ARE UNCLEAR TO U.S. MILITARY FORCES WILL BE CONTACTED USING THE ENGLISH LANGUAGE ON VHF 121.5 AND/OR UHF 243.0 MHZ. AIRCRAFT RECEIVING ADVISORY CALLS SHOULD ACKNOWLEDGE RECEIPT AND UNDERSTANDING OF THE WARNING ON THE FREQUENCY OVER WHICH THE CALLS WERE RECEIVED AND PROVIDE REQUESTED INFORMATION.
END PART 3 OF 3)

NOTAMS FOUND 3
00:00:02 ELAPSED TIME
END OF REPORT

46 NOTAMS SEARCHED
4 NOTAMS SUSPENDED
42 NOTAMS MATCHED
0 NOTAMS NOT FOUND
00:00:06 ELAPSED TIME
END OF REPORT